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CHICAGO AND WESTERN INDIANA RAILROAD
COMPANY,

Cross-Complainant Below
and Appellant,

vs.

JOHN C. FETZER, BENJAMIN THOMAS and
CHARLES R. KAPPES,

Cross-Defendants Below
and Appellees.

9/50
48
240 I.A. 635

APPEAL FROM SUPERIOR

COURT OF COOK COUNTY.

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the Chicago & Western Indiana Railroad, cross-complainant, from a decree of the Superior court of Cook county in a suit in equity for an accounting brought by a cross-bill by the Chicago & Western Indiana Railroad Company against John C. Fetzer, Benjamin Thomas and Charles R. Kappes, defendants.

Fetzer is the only defendant that is a party to this appeal.

The cross-complainant claims that there is a balance due from Fetzer amounting to \$652,391. Fetzer denies that any amount is due. The chancellor decreed that the cross-complainant should recover \$25,000 with interest, making a total of \$28,854.17; and that Fetzer should recover \$5,080.16 for costs advanced by him.

The present cross bill of the Chicago and Western Indiana Railroad Company was filed in a suit in equity brought by Fetzer to set aside and to enjoin the enforcement of an award that was made in an arbitration proceeding between the Chicago and Western Indiana Railroad Company on the one side, and Fetzer, Thomas and Kappes on the other. The arbitration proceeding grew out of a suit in equity brought by the Chicago and Western Indiana

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Railroad Company against Fetzner, Thomas and Kappes, alleging fraudulent misappropriation of the funds of the Chicago and Western Indiana Railroad Company by Fetzner, Thomas and Kappes, and asking for an accounting. The finding of the award in the arbitration proceeding was that Fetzner, Thomas and Kappes should account for and pay XXX to the Chicago and Western Indiana Railroad Company the sum of \$525,000.

In Fetzner's bill to set aside the award it is alleged, among other things, that the Chicago and Western Indiana Railroad Company is a corporation of Illinois with a capital stock of \$5,000,000, at all times held and owned in equal shares by the Grand Trunk Western Railway Company, the Chicago and Eastern Illinois Railroad Company, the Chicago, Indianapolis and Louisville Railroad Company, the Chicago and Erie Railroad Company, and the Wabash Railway Company; that these companies are referred to as holding companies; that the properties of the Chicago and Western Indiana Railroad Company (except a belt line division and elevator) are leased on a wheelage basis under perpetual contracts conjointly to the holding companies, the Atchison, Topeka and Santa Fe Railway and the Elgin, Joliet and Eastern Railroad Company.

That the Chicago and Western Indiana Railroad Company has six directors, appointed by the five holding companies, and the Atchison, Topeka and Santa Fe Railway Company, a tenant, each holding company appointing one director and the Atchison, Topeka and Santa Fe Railway Company also appointing one; that each director so appointed is an officer or director of the company appointing him.

That Fetzner is and for many years has been engaged in the purchase and sale of railroad terminal properties and rights of way in and about Chicago, and for many years last past has purchased, sold and dealt in a much larger amount of such property than any other person in the city of Chicago.

That Fetzner entered into an agreement with the Chicago and Western Indiana Railroad Company, acting by Thomas, its president, that Fetzner should "acquire by purchase certain properties in and about Chicago along or pertinent to the right of way" of the Chicago and Western Indiana Railroad Company, to be designated from time to time by Thomas; that Fetzner should "in turn deliver or report said properties to said Railroad Company at a price which should be acceptable to it, and if not so acceptable, there would be no obligation to purchase;" that the purchase price to be paid by the Railroad Company for the properties should "include a profit" to Fetzner "in lieu of all compensation or commission;" that Fetzner "should perfect all titles to said property;" that in the acquisition of the properties and under the agreement, Fetzner "was not and never became the agent or employee in any way of" the Railroad Company; that neither the Railroad Company nor anyone acting on its behalf or otherwise, was to or ever did pay Fetzner any commission or compensation of any kind, and that he received none for making the purchases, "other than the profit aforesaid."

That for more than eighteen years Thomas had been president of the Chicago and Western Indiana Railroad Company, and as such had full power to make the agreement, and that prior to making it Fetzner had been informed by one or more of the directors of the Chicago and Western Indiana Railroad Company that Thomas would make such agreement and had full power so to do.

That at that time Kappes was an employee of the Chicago and Western Indiana Railroad Company under the immediate supervision of Thomas; that Kappes' duties were to examine titles of properties purchased, sold or held by the Railroad Company, to rent such properties, and to collect the "rents and muniments of title;" that "it was not within the duties of" Kappes "as such employee, or within the scope of his employment to acquire or

purchase property" for the Railroad Company.

That Frederic A. Delano was then President of the Wabash Railway Company and its representative as director of the Chicago and Western Indiana Railroad Company; that Delano introduced Petzer to Thomas "as a capable and trustworthy person to make said purchases of real estate for said defendant Railroad Co. (your erator having theretofore been making similar purchases for said Wabash Railroad);" that following the introduction Petzer made the above agreement; that he is informed that the agreement was made pursuant to a resolution of the board of directors of the Chicago and Western Indiana Railroad Company directing Thomas "to make such purchase of said property 'through the same agency' referring" to Petzer, who had made purchases for the Wabash Railway Company, but the purchases for the Chicago and Western Indiana Railroad Company were to be made under a different arrangement than the one between Petzer and the Wabash Railway Company.

That the purchase of railroad property "is a big line of work and is and for many years has been conducted differently from the purchase of other kinds of property;" that usually such purchases are made in the name of persons unknown to the vendors, and that "title is taken in the names of nominees having no interest, but acting only as a channel of title;" that such property is more difficult to obtain on reasonable terms because owners think a railroad company must have the properties, and will pay more than individuals would; that one dealing in such properties "is entitled to and received a larger remuneration and profit by reason of the care and skill required to make such purchases."

That before Petzer began to make any purchases, Thomas directed him to employ Kappes (on account of Kappes' special knowledge of the situation) to assist him in getting such properties; that

Thomas informed Fetzner that Kappes could give him valuable information and assistance and that Kappes should be paid without expense to the Chicago and Western Indiana Railroad Company out of Fetzner's profits; that pursuant to such request and authorization Fetzner employed Kappes to assist in making the purchases and agreed to pay him an amount afterwards to be determined upon, dependent upon the service and what Fetzner could afford to pay out of his profits; that Kappes had theretofore assisted in making the purchases for the Wabash Railway Company and that this fact was known to the Chicago and Western Indiana Railroad Company.

That about June 1, 1916, pursuant to the agreement with the Chicago and Western Indiana Railroad Company, Fetzner began to acquire properties designated by Thomas and purchased three tracts adjoining the right of way of the Railroad Company, which tracts Fetzner afterwards caused to be deeded to the Railroad Company, the tracts being generally described as follows: Parcel A consisting of three yards or tracts adjoining the railroad at (1) Stony Island Avenue, South Chicago; (2) at Hayford Yards; and (3) at the Western Electric Yards between 22nd and 16th streets. Parcel B, a large tract of land adjoining the right of way at Canal street between 24th and 29th streets. Parcel C, composed of numerous pieces of property at Hegewisch, purchased for the Chicago and Western Indiana and the Kensington and Eastern Railroad company - all purchased during 1906 and 1907.

That the purchases of Parcels A, B and C were made by Fetzner from 150 different owners; and in making them and turning over the properties to the Chicago and Western Indiana Railroad Company, Fetzner "at all times acted in the utmost good faith, exercised the highest degree of skill and care" and borrowed sev-

eral hundred thousand dollars on his personal credit to make the purchases, and in every transaction conveyed to the Chicago and Western Indiana Railroad Company a good title.

That there was no collusion between Petzer, Thomas, Kappes, or with any other person in fixing the prices for the properties, and that before Petzer bought any of those properties he would inform Thomas at what price the Chicago and Western Indiana Railroad Company could acquire each piece of property from Petzer, and that Thomas would accept or reject the proposition so made.

That Petzer devoted great care and labor for two years in making the purchases and obtaining the titles to the properties; that the transactions were not completely closed until the spring of 1908, when "a full accounting was then and there had between" the Chicago and Western Indiana Railroad Company and Petzer of all of the purchases; that no question was raised by the Railroad Company or any of its officers "with reference to the accounting and the correctness thereof until January 19, 1910."

That at that time the Chicago and Western Indiana Railroad Company filed a bill in equity in the Circuit court against Petzer, Thomas, Kappes, and certain other persons, charging them with fraud in the purchase of the properties and in the conveying of them to the Railroad Company, and charging that by collusion between Petzer, Thomas and Kappes \$1,200,000 belonging to the Railroad Company had been misappropriated, all of which charges Petzer claims are utterly untrue.

That on February 9, 1910, after the filing of the bill, Petzer, the Chicago and Western Indiana Railroad Company, Thomas and Kappes entered into an arbitration agreement.

That in the arbitration agreement it was agreed that all

moneys and bonds received by Fetzner from the Chicago and Western Indiana Railroad Company, except \$425,000, had been paid out in the purchase of property; that Fetzner had received from the Chicago and Western Indiana Railroad Company \$2,764,399.25, of which \$875,000 was in the bonds of the Railroad Company at par; that Fetzner made a gross profit of \$151,202.12 represented by bonds of the Railroad Company, worth 80 per cent; that this profit remained after paying Kappes \$61,172.88, of which \$21,000 was in bonds of the Railroad Company and the balance was in cash; that out of the \$425,000 Fetzner paid back to the Railroad Company "or under its order" \$122,000; paid as directed by the Railroad Company \$60,000; and also paid as directed by the Railroad Company \$30,000 to William J. Henley, the Vice-President and General Counsel of the Railroad Company; that from these payments Fetzner in no way profited.

That Fetzner was at no time an officer, director or employee of the Chicago and Western Indiana Railroad Company, and that in receiving the moneys and bonds he dealt only with Thomas; that he received instructions from Thomas in 1907 to "turn over and pay back" to the Railroad Company sums aggregating \$122,000; that he did turn over that sum to Thomas and in the same manner paid \$30,000 to Henley and \$60,000 to other persons; that at the time that Thomas requested Fetzner to make these payments Thomas stated to Fetzner that he, Thomas, had authority to make the payments; that all such payments were for the benefit of the Chicago and Western Indiana Railroad Company; that Fetzner did not know the purposes for which the moneys were to be used, but that he has since learned that they were for the benefit of the Railroad Company, and that certain of its officers and directors knew about the payments and requested that they be made.

That on March 18, 1910, the arbitrator delivered in

writing an award directing Fetzner to pay \$325,000 to the Chicago and Western Indiana Railroad Company; that the award was "fraudulent, illegal and void."

That Fetzner tendered and offered to pay to the Chicago and Western Indiana Railroad Company "any and all sums of money that may be found by this court to be due and owing from him to said defendant Railroad Company by reason of the transactions referred to in said arbitration agreements."

The answer of the Chicago and Western Indiana Railroad Company to the bill of Fetzner denied all of the allegations in the bill as to Fetzner's having received the moneys and bonds from the Railroad Company as an independent vendor, or that he was authorized by the Chicago and Western Indiana Railroad Company to make any disbursements of the money and bonds, except in the purchase of real estate for the Chicago and Western Indiana Railroad Company; denied that Fetzner ever returned to the Chicago and Western Indiana Railroad Company the \$213,000 which he claimed he had paid to Thomas, Henley, and other persons under Thomas' directions; and alleged that all the moneys and bonds were delivered to Fetzner as the agent of the Chicago and Western Indiana Railroad Company, and in no other capacity; denied that Fetzner was employed as alleged in the bill and averred that if any such arrangement was made, it was in pursuance of a fraudulent conspiracy between Fetzner, Thomas and Kappen to defraud the Chicago and Western Indiana Railroad Company; denied that purchases of property for railroad purposes are different from purchases of other property, or that brokers making purchases of property for railroad purposes are entitled to larger remuneration than brokers buying other property; denied that Fetzner ever acquired for himself title to either Parcel A, B, or C, or had ever informed the Chicago and Western Indiana

Railroad Company of the price at which the parcels or any one of them could be bought from him, or that he acted in good faith, or exercised the highest degree of skill in the purchase of the parcels, or was vendor of any one of the parcels; alleged that the Chicago and Western Indiana Railroad Company supplied Fetzner with such sums of money as he needed from time to time to make such purchases, and that all of such sums were received by him as agent of the Chicago and Western Indiana Railroad Company; denied that any accounting had been made for such sums of money, or that any part of the sum of \$212,000 had been paid out by Fetzner under the direction of the Chicago and Western Indiana Railroad Company or for its benefit.

The answer of Thomas to Fetzner's bill admitted that Thomas made the arrangement with Fetzner to furnish the funds to buy properties which Fetzner would offer to the Chicago and Western Indiana Railroad Company in the manner as alleged in Fetzner's bill; admitted that the board of directors of the Chicago and Western Indiana Railroad Company passed a resolution directing Thomas to employ Fetzner to purchase the properties, but alleged that Thomas had no remembrance of the wording of the resolution and believed that the resolution was the same as the bill sets forth; alleged that Fetzner purchased the properties under the agreement and that a full accounting was had between the Chicago and Western Indiana Railroad Company and Fetzner; denied knowledge of Fetzner's profit in making the purchase, but asks for strict proof; admitted that Fetzner returned to the Chicago and Western Indiana Railroad Company, or to Thomas as directed by him for the Chicago and Western Indiana Railroad Company, a large sum of money and paid further sums to Henley when so directed, but denied knowledge as to the exact amounts; alleged that in directing Fetzner to make the disbursements, Thomas had authority to do so; alleged on information and belief that the disbursements

were for the benefit of the Chicago and Western Indiana Railroad Company.

The answer of Kappes to Fetzner's bill denied knowledge of Fetzner's agreement for the purchase of the properties; or of Thomas' authority to make such an agreement; or of Fetzner's fidelity in carrying out the agreement; denied that Kappes was paid by Fetzner as large an amount as alleged, but alleges that he had agreed with Fetzner to stand charged with that amount to expedite the hearing before the arbitrator.

The cross bill of the Chicago and Western Indiana Railroad Company recited its original bill referred to in Fetzner's bill, and recited the arbitration agreement and the award; alleged that under the award Thomas and Kappes had paid to the Chicago and Western Indiana Railroad Company \$76,000 and that nothing more had been paid; that Fetzner had filed his bill to set aside the award and had offered to account to the Chicago and Western Indiana Railroad Company; that in the event the award should be set aside the court should require an accounting by Fetzner for an amount much greater than the award, which amount Fetzner in collusion with Thomas and Kappes had misappropriated; that Fetzner was employed by the Chicago and Western Indiana Railroad Company to purchase certain properties adjacent to that Company's right of way between 23rd and 28th streets in pursuance of a resolution of the Company's directors; that Fetzner accepted the said employment with the purpose and intention of defrauding the Company by falsely representing that the properties purchased cost sums far in excess of the amounts actually expended therefor.

The cross bill sets forth the amounts paid to Fetzner by the Chicago and Western Indiana Railroad Company, the properties purchased by Fetzner with the funds of the Chicago and Western Indiana Railroad Company, the amounts alleged to have been falsely

There are two versions of the document, one in English and one in Spanish.

• All figures include 1994 estimates of values for 1990-1992

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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The authors wish to thank the following people for their assistance:

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There is a large number of other papers in this volume, but they are not relevant to the current discussion.

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reported by Fetzner as paid for the properties purchased; averred that the checks shown and the receipts returned to the Chicago and Western Indiana Railroad Company by Fetzner as evidence and vouchers of the payment of the amounts for the purchased properties were false and were not the checks paid to the vendors nor the receipts of the vendors, but were checks paid to dummies and receipts from dummies selected by Fetzner, Thomas, or Kappes, in pursuance of a conspiracy or arrangement to defraud the Chicago and Western Indiana Railroad Company; that in consequence the Chicago and Western Indiana Railroad Company had been defrauded of a very large amount of money, the exact amount being unknown; that this money was divided among Fetzner, Thomas and Kappes.

The cross bill prayed that Fetzner be required to account for the moneys so received by him from the Chicago and Western Indiana Railroad Company for the purchase of the properties; that Fetzner, Thomas and Kappes be decreed to pay the amount found due on the accounting, to surrender to the Chicago and Western Indiana Railroad Company the bonds fraudulently obtained and retained by them respectively; that Fetzner be decreed to have received certain lots in Block 6, South Branch Addition, in trust for the Chicago and Western Indiana Railroad Company, which he had purchased with the funds of the Chicago and Western Indiana Railroad Company but had not conveyed to it.

The answer of Fetzner to the cross bill denied knowledge of the amounts paid to the Chicago and Western Indiana Railroad Company by Thomas and Kappes under the award, and alleged that any sums so paid were paid severally in full discharge of all claims under said award; admitted that Fetzner paid nothing under the award; denied any indebtedness to the Chicago and Western Indiana Railroad Company on the transactions alleged in the cross bill; denied that

Fetzer acted as agent for the Chicago and Western Indiana Railroad Company; and adopted the allegation in Fetzer's bill in regard to his employment; admitted that Fetzer purchased and conveyed properties as alleged in his bill, and adopted the allegations in his bill in that regard; alleged that he received from the Chicago and Western Indiana Railroad Company the sums of money set out in his bill, and adopted the allegations of his bill in that respect; denied that Fetzer cheated or defrauded the Chicago and Western Indiana Railroad Company, or made any false representations in regard to the properties, or the titles thereof or in regard to the persons from whom they were bought or in conveying them, or in any matter or thing connected with them; denied that he acted as agent in making the purchases, or fraudulently appropriated moneys or securities of the Chicago and Western Indiana Railroad Company by false representations or otherwise; denied that he conspired with Thomas and Kappes or either of them; denied that he held any property or securities of the Chicago and Western Indiana Railroad Company, or in which that company has a lien or interest; denied that he held or ever received, as trustee, the properties described in the cross bill; alleged that the award was illegal and void for the reasons set forth in his bill.

In an amended answer to the cross bill Fetzer made certain allegations in regard to particular transactions. These allegations will be noticed in the discussion of these transactions.

The answer of Thomas to the cross bill admitted that Thomas and Kappes paid \$76,000 on account of the award; denied that the award was valid; denied all allegations of conspiracy and collusion; admitted that Fetzer was authorized to purchase the properties, but denied knowledge as to how he was employed by the cross complainant to purchase them; denied that the cross complainant is entitled to an accounting or to any relief; denied that any money

or bonds were divided among Thomas, Fetzner and Kappes.

The answer of Kappes to the cross bill denied that Kappes and Thomas paid \$76,000 on the award; alleged that Kappes turned over to the cross complainant property of unfixed value less than said sum, but denied knowledge of any payments by Thomas; denied knowledge of the amounts of money placed in Fetzner's hands by the cross complainant and the specific properties purchased by Fetzner, or whether Fetzner purchased the properties on his own account or for the cross complainant; denied the allegations in regard to the conspiracy to defraud the cross complainant.

The evidence is voluminous. The record consists of 7909 typewritten pages, and the abstract of 1431 printed pages. The labor of writing the opinion, however, has been lightened by the thorough, able briefs of both counsel for the cross complainant and counsel for Fetzner.

The question which we think logically should be determined first, is whether in his dealings with the cross complainant Fetzner was acting as an agent or as an independent vendor. If he was acting as an agent, his legal obligations to the cross complainant would be materially different from his obligations as an independent vendor.

There was no written contract between Fetzner and the crosscomplainant. The terms of the contract were arranged verbally between Fetzner and Thomas, and were approved by a resolution of the board of directors of the cross complainant. It was simply agreed that Fetzner should purchase property for the cross complainant in the same manner that he had previously purchased property for the Wabash Railway Company under an agreement with that company. The agreement with the Wabash Railway Company was that Fetzner should buy at the

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best prices obtainable, such lands for that company as Delano, the president of the company, should specify; and that Fetzer should receive his commissions for his services from the vendors of the properties; but that if a vendor in any instance did not pay the usual or a satisfactory commission, Fetzer might render a bill to the Wabash Railway Company if he thought it fair "after the whole matter was concluded."

In his testimony relating to the agreement between him and the cross complainant, Fetzer stated that in June, 1906, Thomas telephoned him to come to his, Thomas', office; that Thomas asked him how he was getting along with his purchases for the Wabash Railway Company; that he, Fetzer, told Thomas he was getting along all right; that Thomas wanted to know how he, Fetzer, was getting along with Kappes; that he, Fetzer, replied that he was getting along satisfactorily; that Thomas said, "You found him a valuable assistant?" that he, Fetzer, said that he certainly had; that Thomas said, "I know you are getting along all right with the Wabash; they are very well pleased with the way you are doing; and I want you to purchase some property if you will;" that Thomas said, "You can probably use Mr. Kappes in these matters as you are now, advantageously;" that he, Fetzer, said, "I should think so. I used him very advantageously this time;" that Thomas said, "And you and he are getting along nicely?" that he, Fetzer, said, "Yes, very nicely, indeed;" that Thomas then sent for an employee of the cross complainant named Wilbern, who was in the outer office, and asked him to bring some maps; that he, Fetzer, thinks they were the maps of three railroad yards, - South Chicago, Mayford, and West Twelfth street; that Thomas showed him, Fetzer, what he wanted to accomplish and asked him to take it up with Kappes; that before that Thomas got

Kappes into his office and said that Fetzner was going to do some work for the Western Indiana [the Chicago and Western Indiana Railroad Company], the cross complainant "the same as" he, Fetzner, "had been for the Wabash;" that he, Fetzner, would take the matter up with him, Kappes, and for him, Kappes, to give him, Fetzner, any information that he, Fetzner, wanted; that he, Fetzner, went to Kappes' office, outlined some of the properties, got all the information he, Kappes, had, and "mapped out a course of campaign;" that Kappes wanted to know if the compensation would be the same as it had been in the Wabash matters and "would go along in the same way;" that he, Fetzner, told Kappes yes, that he, Fetzner, would make the compensation satisfactory; that he, Fetzner, immediately undertook the purchase of the properties.

Kappes, called as a witness on behalf of Fetzner, testified that his first employment by Fetzner was with reference to the Wabash Railway Company; that when he was employed by Fetzner in connection with the purchases of property for the cross complainant he did not understand that Fetzner was acquiring any property directly for the cross complainant; that he understood that Fetzner had an arrangement to acquire the property for himself under an arrangement by which he was to take over the bonds, or something else of the cross complainant, finance these himself, handle the property as best he could with the bonds, and acquire the property at a general lump sum that had been agreed upon; that he, Kappes, does not mean to say exactly that he, Fetzner, was to acquire the property for himself for a general lump sum, but that Fetzner had indicated a general lump sum at which he could acquire the property; that he, Kappes, understood that from Thomas.

Kappes testified further that he understood substantially that Fetzner was buying the property for himself, and that he was to

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re-sell it to the cross complainant; that Fetzner was to be the real vender to the cross complainant and the cross complainant was not to look beyond Fetzner; that it was his, Kappes', understanding that the cross complainant was to have no relations with the persons from whom Fetzner might buy and, therefore, it would be unimportant whether Fetzner paid one price or another price to the vender.

Kappes testified further in this respect that he did not at all times understand that Fetzner was the seller to the cross complainant; that he, Kappes, did not know how Fetzner was handling his purchases, except as Fetzner told him; that Thomas did not tell him, Kappes, that Fetzner was the man who was the real seller to the cross complainant; that nobody told him except Fetzner. In regard to who was to supply the money for the purchases of the property, Kappes testified that he did not understand definitely from whom the money was to come other than when Fetzner employed him Fetzner stated that the money would come from the Wabash Railway Company; that when Fetzner employed him in the matter of the purchases for the cross complainant, he, Kappes, had no specific understanding where the money was to come from; that he had a general understanding that it was to come by some process of Fetzner's handling bonds; that only by inference was he, Kappes, aware of the fact that the entire consideration, whether in bonds or in money, was to be furnished by the cross complainant to Fetzner with which to make the purchases; that he did not know that in addition to bonds, Fetzner received a very large sum of money from the cross complainant to make the purchases; that if it was true, this was the first time that it has been called to his attention except as it appeared in this litigation.

John B. Murphy, treasurer of the cross complainant,

called as a witness on behalf of the cross complainant, testified in respect of the employment of Fetzner by the cross complainant, that he, Murphy, met Fetzner for the first time on January 31, 1907, in the office of Thomas; that he was called into the office by Thomas and introduced to Fetzner by Thomas; that Thomas said that he, Thomas, was going to buy a lot of property between 23rd and 29th streets along the right of way, and that he had been authorized by the board of directors to employ Fetzner to buy the properties for the cross complainant; that the method to be followed was that "we would make vouchers in favor of Fetzner for round sums of money for advances to him on account of purchases of property;" that Fetzner would take the money into his own account and check against it as he made the purchases, and account ^{to} the company by furnishing receipts from the sellers of the property; that Thomas said that Fetzner had been introduced to him as a good man by Delano; that Delano had used Fetzner for the Wabash Railway Company in purchasing real estate.

Thomas did not testify.

When the above evidence in regard to the status of Fetzner in relation to the cross complainant is considered in connection with the pleadings, the record presents some strange inconsistencies. Fetzner explicitly alleged in his bill that he "was not and never became the agent or employee in any way" of the cross complainant; Thomas in his answer to Fetzner's bill averred on belief that this allegation was true; Fetzner in his answer to the cross bill expressly denied that he was the agent of the cross complainant.

Notwithstanding these allegations in the pleadings, Fetzner testified that he was the agent of the cross complainant in some of the purchases of the properties, and was the independent vendor in others. These latter purchases we shall discuss in detail later.

After considering all of the evidence in the case bearing on the question whether Fetzner was the agent of the cross complainant or was an independent vendor, we are of the opinion that Fetzner was the agent of the cross complainant in all of the purchases of properties, and that he did not act as an independent vendor in any of the purchases; that the original agreement, as testified to by Fetzner himself, contemplated that Fetzner should act as the agent of the cross complainant in all of the purchases of the properties; that this agreement was approved by a resolution of the board of directors of the cross complainant; that Thomas was never authorized by the board to change the agreement; that if Thomas changed the agreement so as to allow Fetzner to act as an independent vendor, the directors did not know of such change. The testimony of Kappes to the effect that he understood that Fetzner was an independent vendor in all of the purchases of the properties is at variance with the testimony of Fetzner that he was the agent of the cross complainant in all of the purchases, except several that he indicated; and Kappes' testimony in our opinion is also contrary to all of the other evidence in the case relating to the question whether Fetzner was an independent vendor. We reject Kappes' testimony as unworthy of belief.

Since we held that Fetzner was the agent of the cross complainant under the agreement entered into between him and the cross complainant, Fetzner occupied a position of trust and confidence toward the cross complainant. (Salisbury v. Ware, 183 Ill. 505, 1511.) Fetzner owed the duty to the cross complainant to give the cross complainant the benefit of all of his ability, skill and industry in making the purchases of the properties; and the cross complainant was entitled to the properties at the price that Fetzner paid for them. Salisbury v. Ware, *supra*, pp. 511, 512. All of the profits or advantages gained in the transaction belonged to the

cross complainant. Cotton v. Holladay, 59 Ill. 176, 179.

The law will not permit an agent, without the assent of his principal, to acquire an interest in the subject matter of the agency adverse to that of his principal. The agent must act solely for the interest of his principal while executing the trust. The law will not permit an agent to place himself in a position where he may be tempted to abuse the confidence reposed in him by his principal. Agency is a trust voluntarily assumed, and it must be executed in the utmost good faith. Cotton v. Holladay, *supra*, (pp. 176, 179.)

It has been said that "a trustee may not put himself in a position in which to be honest must be a strain on him." Tyler v. Sanborn, 128 Ill. 136, 142. In *Corpus Juris* (vol. 2, pp. 694, 695) the rule is stated as follows: "Good faith and loyalty to the principal's interest require that an agent must not, except with his principal's full knowledge and consent, assume any duties or enter into any transaction concerning the subject matter of the agency in which he has individual interests, or represents interests adverse to those of his principal. He cannot, without the knowledge and consent of his principal, represent himself and the principal where their interests conflict; and he must not put himself into such a position that his interests become antagonistic to those of his principal, or speculate in the subject matter of the agency. This rule is adopted on the ground of public policy, in order to remove from the agent all temptation to neglect his principal's interest."

In the case of Tyler v. Sanborn, *supra*, the court held (p. 143) that "it is of no consequence that no fraud was actually intended, or that no advantage was, in fact, derived from the transaction by the agent;" that "the rule is not merely remedial of wrong actually committed, - it is intended to be preventive of wrong."

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10. The following are the names of the persons who have been appointed to the various committees of the Board of Directors:

It has been said that the world is a stage, and that we are all players in a great game. But what if the game is rigged? What if the rules are set by those who are not playing?

1. The first of these is the fact that the Commission has not yet received any information from the Government of the Republic of China (Taiwan) regarding the situation in the Republic of China (Taiwan) since the end of the Second World War.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first group of people who are interested in the results of the study are the researchers themselves. They want to know how well the study was conducted and whether the results are reliable and valid. They also want to know how the study was funded and whether there were any conflicts of interest.

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1990, p. 100.

...the following, as necessary to the subject matter of the report.

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In the Encyclopaedia of Law and Procedure (vol. 31, pp. 1446, 1441) it is stated that "an agent authorized to purchase property for his principal must not, except with the principal's full knowledge and consent, purchase the property for himself directly or indirectly; and in accordance with this rule, an agent employed to purchase cannot purchase the property for himself and then resell it to the principal at an advance. If the agent is guilty of wrongdoing in this respect the principal, when he acquires knowledge of the facts, may at his election avoid the transaction, whether the agent acted fraudulently or not; or he may compel the agent to account for any excess he received above the real value of the property."

The rule is also well settled that it is ordinarily the duty of an agent to keep true, regular and accurate accounts of all of his transactions and dealings in the subject matter of the agency, as to both the receipts and disbursements; and to be ready to render to his principal a full and complete statement of his dealings, and of the state of the accounts between them, supported by proper vouchers; or to show some good reason for not doing so. 2 Corpus Juris, 738, section 404.

It is the rule that where the defendant is an accounting party, as one occupying a fiduciary relation, the burden is on him to show the performance of his trust; and one who is liable to render an account has the burden of proving allowances or credits which he may claim. 1 Corpus Juris, p. 643, section 129.

An agent who fails to keep an account raises thereby a suspicion of infidelity or neglect, creates a presumption against himself, and brings upon himself the burden of accounting to the utmost for all that has come into his hands; and in such case every doubt will be resolved against the agent and in favor of the principal.

pal; and if the agent renders an untrue account, giving a false balance, he becomes at once liable to his principal. 2 Corpus Juris, p. 739, section 404.

In the case of White v. Sherman, 168 Ill. 569, in which the use of trust funds by the trustee of an estate was involved, the court said (p.594): "The authorities are uniform to the effect that the trustee may not deposit the trust funds in his own name;" and the court also said (p.604): "The doctrine is a familiar one, that every presumption is indulged against the trustee who has personal dealings with the trust."

The case of White v. Sherman, *supra*, was cited with approval by the Supreme Court in the recent case of The People v. Small et al., in support of the following rule: "Where it is established that a public official having public funds in his custody deals with the trust money in his own name directly or indirectly, every presumption is indulged against the trustee and is held to a strict accountability for the conversion."

The evidence shows many instances of large differences between the amounts actually paid the vendors of properties and the amounts which Fetzner reported as having paid them. In a number of the transactions Fetzner has admitted that there are deficits and has attempted to explain the deficits. His explanations, however, in our opinion do not extricate him from his difficulties. Two questions arise in connection with Fetzner's explanations, - first, are they true; and second, even if true, are they sufficient in law. In our view his explanations contravene probability, and before they should be accepted as true they should be corroborated in proportion to the contravention of probability. They have not been corroborated. It has been said that probability is the only guide in the affairs of life. It is also the only criterion that may be used in determining the credibility of legal testimony. Many of Fetzner's explanations, even if accepted as true, are insufficient in law.

The evidence shows that although the transactions were extensive and complicated, involving dealings with one hundred and twelve different vendors, and the disbursement of and accounting for \$2,764,500, yet Fetzner did not keep any books of account of the purchases of the properties; that the only records he had were checks, check stubs and letters; that these checks and check stubs in some instances indicated payments to one person, when, according to Fetzner's testimony, they were in fact paid to another; that Fetzner kept no separate bank account for the money used in connection with the purchases of the properties; that he had four bank accounts, two in his own name, one in the name of

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10. The following are the names of the persons who have been appointed to the various committees of the Board of Directors:

With the use of these means of the Government of the United States, the following information is being furnished to the public:

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"(after all) it would not be surprising if he had been killed."

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and the authors are grateful to the referees for their constructive comments.

see also *Journal of the American Medical Association*, 1974, 231: 1075-1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1

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THE UNIVERSITY OF CHICAGO

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See To: JMWAVE01 and See: JMWAVE0102, dated 16 October

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Manuscript received 12/10/04; revised manuscript received 1/10/05; accepted manuscript received 1/10/05.

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continued; that there was no evidence that the company

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Robert Fleming, a dummy, and one in the name of Edward M. Peters, his partner; that Fetzner's check book covering the period from November 6, 1906, to March 4, 1907, according to Fetzner's testimony, was lost; that during this period Fetzner received from the cross complainant sums of money amounting to \$713,000; that Fetzner never made any statement of account covering the purchases of the properties until he prepared one shortly before filing his bill to set aside the award; that in respect of this statement Fetzner testified as follows: "This was all gotten up very hastily at the time we were negotiating for the purpose of arbitration as near as I could. I didn't have any time to go searching around for hidden records or anything of that kind, or lost records." The evidence shows further that in many instances the reports made by Fetzner to the cross complainant in respect of purchases of properties were false and concealed amounts which had not been paid for the properties.

On the authorities which we have cited above announcing the principles of law governing agency, since Fetzner failed to keep an account and made false reports, a suspicion of infidelity or neglect is presumed against him, and the burden of accounting clearly and honestly for all of the moneys that have come into his hands is imposed upon him; furthermore, every doubt will be resolved against him and in favor of the cross complainant.

The first purchase that Fetzner made for the cross complainant was the property referred to as the Hanks property. This property was to be used in connection with what are called the "Hayford Yards" of the cross complainant. The property was owned by Mrs. Clarinda B. Hanks, who resided in the city of Boston, Massachusetts. Mrs. Hanks was the wife of Charles B. Hanks. Fetzner reported to the cross complainant that he had purchased this

property for \$180,000, when in fact he had paid \$150,000 for the property. The cross complainant showed by the testimony of Mrs. Hanks that she had received only \$180,000. Charles S. Hanks, the husband of Mrs. Hanks, died before the case at bar was begun.

Fetzer purchased the Hanks property with funds furnished to him by the cross complainant. The documentary evidence showed that he used a check of \$1,000, payable to himself, and a check for \$179,000, also payable to himself, in connection with the purchase of the property; and that he obtained a draft of the Shawmut National Bank of Boston for \$20,000, payable to his own order. In the circumstances it was incumbent on Fetzer to explain the discrepancies. His explanation is so improbable and so involved that we will not state our interpretation of his testimony, but will quote from his testimony as it appears in the abstract.

On direct examination Fetzer testified as follows:

"There was one party that Kappes said he did not think I would get a price from, a man named Hanks, who owned some property at Hayford. Kappes said they were unable to get a price from him; he had it up, and said his agents were unable to, and that he was a very peculiar man. ** I went to Boston and took with me a certified check to my own order for \$1000 and \$10,000 in currency if I needed any more to advance. *** I found that they [the Hanks] were in a house boat somewhere in the ocean. ** The house boat had come into Newport and was anchored. I got a boat and went out to the house boat and saw Mr. Hanks. He was a very pleasant gentleman; said the property belonged to his wife; that he didn't care to put a price on it; that he didn't need the income from it and that it was hers, and she didn't want to have the responsibility of putting a price on it; that he had a son and daughter, and when they came of age if they wanted to sell it they could, but it was not worrying him any and he didn't care to sell it. ** Hanks was the

classmate of Roosevelt at Harvard and was investigating railroads for him in some private capacity; had been on the Citizens' Committee fighting the New Haven and the South Station in Boston. When we began to talk about railroads and terminals he got interested and said he would see his wife. She was in another part of the boat: there was a large room across the end, a sitting room or library, that was the only room I was in. He left ostensibly to talk with his wife, and when he returned he said they didn't care to sell. Finally he said, 'You give me more information and I will see what I can do for you tomorrow.' He said he was not a business man and didn't like to sell, but he would like to oblige me, and said, 'Now if I get you a price on this property that you can use it at, I ought to have some pay for my services. I have been to a good deal of expense here in the investigations I have been making for Roosevelt, and I have spent more money than he has allowed me,' and he said, 'Whatever I get I expect to spend it in a public benefit anyway, but you cannot get a price unless I get it for you; nobody else can get you a price and it ought to be worth something.' I said it depended on what kind of price he got from Mrs. Hanks. I asked him what he thought he ought to have and he said he thought he ought to have \$25,000. ** I said I hoped to buy it [the property] for \$2,000 an acre. ** He said he would see me the next day, and he did see me every day for five days. ** In his last visit he made a price of \$3,000 an acre. I said I couldn't pay him and pay anything for getting the property; that that would be an outside price, and I should have five per cent. commission on any price that I had to pay him, and I could not possibly do more than that. He said if I paid him \$3,000 an acre and I got five per cent. it would be \$3,000, and if I got the property so that it cost \$150,000, would I be willing to give him \$21,000, and I said I certainly would. I made a contract

and gave him the \$10,000 and the \$1,000 check at that time; and made a contract reciting the \$1,000 check and the purchase of the property at \$150,000 and got a memorandum receipt for the \$10,000, which I agreed to give up when the deal was closed in Boston later; and I came back to Chicago and was to get the other \$10,000 and make preparations to close the deal and buy the entire property. I told Mr. Thomas that the matter was a little complicated, but that I got it for \$3,000 on more. Thomas approved of the deal, and I told him I needed some more money to purchase the property. I think he wanted to know how much more I wanted. I said \$100,000 and he advanced me another \$100,000; and I got a certified check then to my own order for \$179,000. ** Next I notified Hanks that I would arrive in Boston Sunday prepared to close at the Touraine Hotel Monday morning. ** We got a notary in the Touraine Hotel to acknowledge Mr. and Mrs. Hanks' signatures to the deed. I told Hanks that I had a check drawn to my own order - I did not tell them for what amount - to close up this entire transaction, and if he would go with me to the bank I would get the check cashed and make the disbursements. ** I told him I had a letter of introduction to the National Shawmut people. ** When I got there I gave him his additional \$10,000 in currency which I had taken with me, and told the bank that I wanted to get this cash and that I would get a cashier's draft for \$20,000, which I think I did. I don't remember whether I got the \$20,000 in currency, or got a cashier's check for that to replace the currency I had taken from Chicago or not, but I think I got a cashier's check from the Shawmut bank. ** I never had any communications with Mrs. Hanks that I remember of at all, other than I have testified to here. I am positive that if her testimony would tend to show that she thought she saw me on the boat the first time I went aboard, I think it incorrect. Of the \$180,000 paid for the Hanks' deed, \$9,000 in a draft to the order of Edward H. Peters

remained in my possession. I think I mailed it to him."

On cross examination Fatzner testified as follows:

"As to the Hanks matter I undertook the purchase and went to Boston to purchase it. ** I went down as an agent of the railroad to purchase it. I don't know as I made my negotiations as agent of the railroad. When I found this was going this way I made up my mind that I didn't want to do it as an agent for the railroad. I thought it ought to be a direct proposition; and I submitted it that way to Thomas and wrote him a letter and told him I would sell the property at so much money. *** The first trip I took \$10,000 in currency, and I took \$1000 in a certified check to my own order. The \$10,000 in currency was provided the \$1,000 check would not be accepted to bind the bargain. I didn't take \$11,000 in currency because I would rather have a receipt for it. I didn't take a \$11,000 check. I wanted to have the currency or a certified check. I had the \$10,000 in currency in bills. I do not remember what the size of them was. If I took a check I knew I would want it certified, and so I took \$10,000 in currency, and I took the \$1000 check in the hope that would be enough for the first payment. I took a certified check. If I had taken \$11,000 in certified check I could not get on that in Boston any amount that I wanted to put up. *** I expected Mr. Hanks to take a certified check for \$1,000, and if he didn't to take the currency. I can't tell what form the currency was in. I took it out of my safety deposit vault; in those times I usually had at least for use \$10,000 in my safety deposit vault. I am sure of that; I have not looked it up. The purpose why I took the \$10,000 out of my safety deposit vault, instead of checking on my bank was because I could make a tender, and I had it in gold so as to make a legal tender. I didn't take the gold to Boston. I said I had gold certificates, that is the legal tender.

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It might be the proper way of doing business to take my check to the bank and get the legal tender, but it was not the way I did it in those days. *** Before I came back I gave him [Hanks] the \$1,000 check and the \$10,000 in currency and took his receipt for it. He gave me a receipt for the ten and a contract for the one. In my direct examination I said he gave me a memorandum receipt. A receipt is on a receipt blank, in regular form. A memorandum receipt is made on a blank piece of paper or letter head or bills or something of that kind; and this was a letterhead or something of that kind. It was given back to Hanks when the deal was closed in Boston at his request. I can't produce the receipt. I know that Hanks is dead. The testimony, 'I ~~can't~~ got a memorandum receipt for the \$10,000 which he agreed to give up when the deal was closed in Boston later' is incorrect. *** I took a check for \$179,000 because I wanted to get Hanks' receipt on the back of it if I could. I didn't get it. I know of no receipt from Mr. Hanks showing that he received any of this money. That is the reason I took \$179,000 when I needed but 169,000. In addition to the \$179,000 I had 10,000 in currency. Because I thought I might not get the receipt, and I didn't like to ask the bank for ten thousand in currency, so I took ten thousand in currency. I think it was gotten from the National Bank of the Republic on a memorandum. I don't think on a check. I think I had to borrow it practically. I don't remember exactly. I expected I might use it or might not. I don't remember exactly, but I think I got it there. I wouldn't say I got it there absolutely. ** I don't remember giving any note to the National Bank of the Republic for \$10,000; I don't think I got it from the safety deposit vault. My impression is I did not. At that time I don't think there would have been any occasion for taking gold certificates. The reason for taking \$10,000 in currency was Hanks wanted it that way when the deal was made, and

that was my agreement, and if I had to, I would carry it out. When I went I had no doubt I would be able to get money on a check to Boston, but I didn't know I had a letter of introduction in Boston, and I think I could cash it. I asked him [Hanks] to go to the bank and introduce me and tried every way I could to get his name on the \$179,000 check, but was unable to do so. There was no question the second trip about my ability to cash a \$10,000 check except I did not care to ask for it if Hanks was there; if he objected to having anything to do with the deal. ** I wanted Hanks to sign the check because I don't like to deposit money unless I can get a receipt. I took the \$10,000 the second time in practically the same form as the first. *** I have no doubt what I received for the \$20,000 was the draft of the National Shawmut^{Bank} on the National Bank of the Republic at Chicago for \$20,000, July 16, 1906, endorsed John C. Fetzer in my handwriting. I don't think it went to my account. I think it was paid to the National Bank of the Republic to lift up memorandum that they had, and get the money out and place it in the vault. It is not my recollection that it lifted a memorandum that they had, and replaced the money I had in the vault. I have no recollection in the matter that I wish to testify to. I didn't say I didn't take the \$10,000 down in a check because I didn't want to have the bank pay me cash on the check. The second time I asked to have the check broken up. I didn't like to ask for so much currency. It might look suspicious, or something of that kind. I didn't care to ask for it. I think Hanks, if he objected to signing the check, would object to the whole thing."

We do not deem it necessary to discuss at length the above testimony of Fetzer in regard to the Hanks transaction. Its inconsistencies and improbabilities are obvious. Tested by the standards governing agency which we have heretofore stated, Fetzer's

explanation of his false report is unconvincing. But Fetzner says he was not an agent in the transaction; that he was an independent vendor; that Thomas approved of the deal. We are clearly of the opinion that the evidence shows that Fetzner was an agent. There is no evidence that the original agreement between the cross complainant and Fetzner in respect of the purchase of property by Fetzner for the cross complainant was modified by the board of directors so as to permit Fetzner to act as an independent vendor in this transaction; nor is there any evidence that the board of directors of the cross complainant knew that Fetzner was acting as an independent vendor. If Thomas permitted Fetzner to change his status from that of an agent to an independent vendor, Thomas acted without authority, and he was merely aiding Fetzner to accomplish a fraud on the cross complainant. There are significant, specific facts in evidence that indicate that Fetzner was an agent and not an independent vendor. He purchased the property with money furnished to him by the cross complainant; he paid the bill for the guaranty of the title of the property to the cross complainant; and he made a report of the transaction to the cross complainant. The report, however, did not show that Fetzner had paid Hanks \$21,000, as Fetzner claims he did, or that Fetzner was retaining \$9,000 as his commissions. But there was no necessity of a report at all if Fetzner was really an independent vendor.

In regard to the \$1000 check, the \$179,000 check, the two items of \$10,000 each in currency, the \$20,000 draft of the Shawmut National Bank of Boston on the National Bank of the Republic of Chicago payable to Fetzner's order, Fetzner's testimony is unsatisfactory and insufficient. In considering Fetzner's testimony in this respect we cannot ignore the fact that Fetzner was confronted with the documentary evidence of the \$1000 check, the \$179,000 check, the \$20,000 draft of the Shawmut National Bank of

Boston, and could not, therefore, deny the existence of these amounts, but was forced to offer an explanation of them. It will be observed that Fetzner testified that on his first visit to Boston he gave Hanks the \$1000 check and the \$10,000 in currency. Assuming that to be true, then according to Fetzner's testimony that Hanks was to be given an additional amount of \$10,000, that he, Fetzner, was to receive \$9,000, and that the amount to be paid for the property was \$150,000, the total amount necessary for Fetzner to have taken to Boston on his second trip was \$169,000. But instead of taking \$169,000 he testified that he took a check for \$179,000 and \$10,000 additional in currency. In other words he took \$20,000 more than he needed. Furthermore, according to Fetzner's testimony, \$9,000 of the \$179,000 check which he took to Boston on his second trip was for his commissions; and the \$9,000 was put in the form of a draft and mailed to his partner, Edward F. Peters, at Chicago. But why was it necessary to take the \$9,000 to Boston, get a draft for it to the order of Peters, and then mail it to Peters at Chicago? We will not repeat the reasons Fetzner gave for taking the \$179,000 check and the \$10,000 in currency on his second trip to Boston. We have set out fully his testimony in this respect, and we think that obviously it appears from the testimony that the reasons he offers are not satisfactory. We have also stated at length Fetzner's testimony in regard to where he got the two items of currency of \$10,000 each, and what he did with the draft of the Shawmut National Bank of Boston, which he testified was to "replace" the two items of currency. All of this testimony in our opinion is indefinite and evasive.

So far we have considered Fetzner's testimony internally. But there is external evidence which contradicts his testimony in material respects. It will be recalled that Fetzner tes-

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tified in substance that negotiations for the sale of the property were carried on between him and Hanks out of the presence of Mrs. Hanks on a house boat; that Hanks told him that Mrs. Hanks did not want to sell the property, but that he would induce Mrs. Hanks to sell if he, Fetzner, would pay him \$21,000.

Mrs. Hanks testified that she met Fetzner on the houseboat but did not remember of talking about business with him; that her husband told her that Fetzner had called about buying the property for a railroad, and that he told her the price was to be \$150,000, although the first offer was a lower price; that she does not remember that at the time she executed the deed at the Touraine hotel, Fetzner and her husband went out and left her at the hotel; that she does not remember that her husband left her at all.

The check for \$1000, which Fetzner^{testified}/positively that he paid to Hanks on his first trip to Boston, was introduced in evidence, and shows that it was paid to Mrs. Hanks. It is true that Mrs. Hanks did not remember the payment but she identified her signature on the check. The endorsement on the check is as follows: "Pay to the order of Clarinda B. S. Hanks, John Fetzner, Clarinda B. S. Hanks." The notations on the check indicate further that the check was paid by the Commercial National Bank of Chicago on July 18, 1906. The evidence shows that this was the same date on which the check for \$179,000 was paid at Chicago by the National Bank of the Republic. The check for \$179,000 was taken to Boston by Fetzner on his second trip and was cashed in Boston by the Shawmut National Bank on July 16, 1906, the date on which the deal for the property was consummated. The inferences are clear, therefore, that the check for \$1000 was paid on Fetzner's second trip to Boston, not on his first, as he testified it was;

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THE COURT: Now you will be asked to read the following passage from the book "The Story of the American People" by Howard Chandler Christy, published in 1908. The passage is on page 100. It is the story of the first voyage of Christopher Columbus across the Atlantic Ocean. It is a very interesting story and I hope you will enjoy reading it. The passage is as follows:

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and that it was paid to Mrs. Hanks, and not to her husband, as Fetzer testified it was.

When Fetzer's testimony is considered in connection with the other evidence relating to the purchase of the Hanks property, we are clearly of the opinion that Fetzer was guilty of fraud against the cross complainant; and that furthermore, even if the question of fraud was eliminated Fetzer has reasonably failed to account for the difference of \$30,000 between the price actually paid for the property and the amount which he falsely reported that he had paid. It follows therefore that Fetzer should pay to the cross complainant the sum of \$30,000.

In the purchase of the Hanks property Kappes approved the two checks payable to the order of Fetzer, namely, the check for \$1000 and the check for \$179,000, after Thomas had referred them to him for his inspection.

In respect of the Hanks purchase there was correspondence between Thomas and Fetzer and Thomas and Kappes which was as follows: The day after Fetzer had closed the deal in Boston he wrote to Thomas from Boston, saying: "I beg to enclose you herewith quit-claim deed from myself and wife to the Chicago and Western Indiana Railroad Company for sixty acres sold you for the 'Mayford Yards' at \$3000 per acre." On July 23, 1906, Fetzer sent Thomas a bill of the Chicago Title and Trust Company for \$945, part of which was for the guaranty of title of the Hanks property. On July 23, 1906, Fetzer wrote Thomas that the purchases of property for the "Mayford Yard" had been completed and requested Thomas to "authorize some one for you to check up my bank checks in this transaction." On July 24, 1906, Thomas sent Fetzer's letter to Kappes directing him "to make the examination suggested" by Fetzer. On August 3, 1906, Kappes wrote to Thomas stating that the "checks were all exhibited

to him and found to correspond with the list attached."

The foregoing correspondence between Thomas and Fetzer and Thomas and Kappes shows that although Thomas and Kappes knew that Fetzer was pretending to be an independent vendor, and was, therefore, under no duty to make a report of his disbursements to the cross complainant, yet Thomas and Kappes went through the formality of approving Fetzer's report; and also of approving a bill for a guaranty policy, which, if Fetzer was an independent vendor, should have been paid by Fetzer. Furthermore, Thomas and Kappes permitted Fetzer to retain \$9,000 as commissions for selling to the cross complainant property which Fetzer claimed was his own. Kappes received as his share of the transaction part of the commissions, namely \$4300, which was 2½% on \$136,000, the amount Fetzer falsely reported that he paid for the property, and the amount on which Fetzer estimated his commissions of \$9000. As we think that Fetzer was guilty of fraud it follows that he is not entitled to the \$9000 as commissions, which he divided with Peters and Kappes. Although it does not appear that Thomas received any money in the Hanks purchase, the evidence shows that in other purchases he received fraudulently large sums of money from Fetzer.

We are of the opinion that Thomas and Kappes were in a conspiracy with Fetzer to defraud the cross complainant in the Hanks transaction.

The purchase of property known as the Jennings purchase and the purchase of property known as the Barry purchase may be considered together.

* including 10% off with purchase of 100g, 100 off 100g

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84. From 2002/2003 to 2005/2006, the total number of children in the population was 10,000.

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In the Jennings purchase the property was reported by Fetzner as having been purchased from Augustus Jennings. In the Barry purchase the property was reported by Fetzner as having been purchased from Charles L. Barry. Both Jennings and Barry were dummies. In referring to the use of dummies in the purchases in question and in the purchases hereafter discussed, we do not intend to convey the idea that the use of dummies is, in itself, improper. We recognize that dummies may be employed properly in complicated real estate purchases. But we think that the evidence shows that in the purchases in question and in the purchases hereafter discussed, Fetzner used the dummies to assist him in his fraudulent purposes.

The Jennings purchase embraced seven separate purchases. Kappes supervised the purchases in question under Fetzner's directions. The amount reported by Fetzner as the cost of the properties was \$145,600. The vendors received only \$77,350. There was a deficit, therefore, of \$68,250.

The Barry purchase was composed of nine separate purchases. The amount reported by Fetzner was \$130,000. The vendors received only \$103,600.

In the Jennings-Barry purchases the total deficit was \$94,650. Fetzner admitted a deficit of \$73,100, and disputed the remainder of \$21,550. We think, however, that the evidence shows a deficit of \$94,650. A significant fact in this connection is that on the very date that Fetzner gave his check to Jennings, a deposit of \$94,000 was made in Fetzner's bank account. Fetzner attempted to account for the admitted deficit of \$73,100 by stating that he added to the amount of the purchase \$13,100 for his commissions, and \$60,000 which he paid by direction of Thomas to Francis S. Peabody, as a contribution to the campaign fund of Fred A. Busse when Busse was running for Mayor of the city of

Chicago. Fetzner testified that Thomas wanted to have the tracks of the General Electric Railway removed from Plymouth court and Dearborn street near the Dearborn street station in the city of Chicago, and that the contribution was made on the promise of Busse that if he was elected mayor he would cause the removal of these tracks.

The principal question to be determined is whether Fetzner legally is entitled to be credited with the \$60,000 which he says he paid ^aas campaign contribution. Fetzner's testimony as to the amount of the contribution was not corroborated by Peabody. On the contrary Peabody testified that he had no recollection of the amount; that it was a large sum; that it was "more than \$25,000." According to Delane's testimony, after the time the \$60,000 is alleged to have been paid, \$15,000 was contributed by Thomas for the cross complainant to the Busse campaign fund on the promise of assistance from Busse to remove the tracks of the General Electric Railway. Delane testified that on one occasion he questioned Thomas in regard to a voucher for \$15,000 which had been issued in favor of Thomas, and had been charged to the track elevation fund, and that Thomas said that the \$15,000 was a contribution to the Busse campaign fund that "had been made with a promise of assistance among other things, that the track of the General Electric Railway in Exchange place, a street that runs past the depot, between Polk and Dearborn streets, would be taken up." The testimony of Delane is uncontradicted.

In connection with the contribution of the \$15,000, it should be stated that a few days after the voucher was issued for the \$15,000, Thomas wrote a long letter to Fred W. Upham, treasurer of Busse's campaign for mayor, in which, speaking of the General Electric Railway, Thomas said that "it was only a

question of time, and a very short time, when we shall be able to fire them out of this territory, but we want them to get out now." This letter is marked "Void." Immediately following this letter there is the following notation in the abstract: "On page 882 [of Thomas' letter-book] is another letter to Mr. Upham, practically the same as the previous letter. Agreeable to Mr. Platt, Mr. Scott noted slight variations in language used, but the purport was unchanged and stated that apparently this was the letter that was sent and not the previous one." The letter referred to as being on page 882 of Thomas' letter-book and as having been sent to Upham, is not set out in the abstract. Whether it contains the identical language which we have quoted from the other letter we do not know. But even if the other letter was not sent to Upham, the language which we set out shows the situation in regard to the removal of the tracks of the General Electric Railway.

It is most improbable that if a contribution of \$60,000 had already been made on Busse's promise that, if elected he would remove the tracks, Thomas would contribute \$15,000 further on the same promise. That the contribution of \$15,000 was in fact made, is evidenced by Thomas' statement to Delano in explanation of the voucher which had been issued for the identical amount of \$15,000. The contribution of the alleged \$60,000 reasonably cannot be reconciled with the subsequent contribution of the \$15,000. The inference is not without support from the evidence that the only contribution that was made was the contribution of \$15,000. Fetzer's testimony as quoted from the abstract in regard to the alleged contribution of the \$60,000 is as follows:

"When I was negotiating with Peabody he was very anxious that Busse should be nominated and elected mayor, and he wanted me to see if Thomas would not make a contribution for the Western Indiana toward his nomination and election, a substantial contribution.

I didn't get very far with Thomas. Asked him respectfully, as Peabody told me. Thomas was interested in getting the General Electric out of Plymouth place, it divided their property. Thomas told me that Bowen had named a price of \$750,000 or something like that, which was preposterous, and they had a man named Minzishelmer who had told Bowen that it was interested and that the Western Indiana had agreed to share in the purchase by the City Railway of the General Electric Railway. Thomas said he never agreed, and because Minzishelmer said he did, Bowen is unreasonable. He was very much excited. He said they have a right to come down on the other side of the Western Indiana [the cross complainant], but we have not any success in the suit trying to get them out. He said, 'If I was sure that Busse would order these tracks out and can have a definite assurance of it, our company would be prepared to make a very substantial contribution.' So I said, 'I will see Mr. Peabody and see what he says about it.' So I seen Peabody. The matter was new to him and he and I talked about it, and he said at once he thought that could be arranged, so I had two or three visits back and forth. I went to Thomas and asked him what he had in mind if Busse was elected. He said he could order it out, and if elected the suit would be pressed and they would be thrown out. At that time there was a city ordinance for the renewal of the franchises of the City Railways for consideration and Thomas was anxious that this owned by the City Railway should not be incorporated. I seen Peabody then and told him what Thomas thought Busse would do, and he said he would see Busse, and for me to find out what Thomas would pay. I told him that Thomas said he would make a very substantial contribution if Busse would make a positive agreement that they would go out. So I seen Peabody and he said, 'Supposing Busse makes the promise direct to General Thomas?' I said that ought to satisfy him, so I saw Thomas and said, 'If Busse tells what he will do directly to you, will that be satisfactory?'

He said, 'yes.' Peabody was after me to see what Thomas would do, and Thomas wanted to see what it would take to get this promise from Busse. Finally Thomas offered to pay \$50,000 to the campaign fund if he would make this definite promise. I think as a matter of fact that the money was not paid to Peabody until after Busse was nominated. Thomas said they would give \$50,000. Peabody said that wouldn't do, that it would cost half to three-quarters of a million dollars; that they ought not to expect to get off for \$50,000; that would be a collection fee of 10 per cent; that they ought to have at least \$100,000. He said it was of great interest to the Western Indiana [the cross complainant] and other corporations to have Busse elected. I went back to Thomas, and finally he said the highest the Western Indiana [the cross complainant] could pay under an agreement to get the tracks out would be \$60,000. Peabody said all right, he would see what he could do, and what kind of a promise he could get. He said if Busse agrees I get the \$60,000. I said \$60,000 currency will be paid over as soon as Thomas tells me. A day or two after he called up and said would Thomas be prepared to go and see Busse? I communicated with Thomas and he said he would. Four or five hours after the time he wanted to meet him, Thomas telephoned that it was all right, to deliver the money, that everything had been arranged between him and Busse. When the \$60,000 was arranged, Thomas said, 'This will have to be charged to real estate; have you such an account?' I said the two blocks Kappes had been purchasing [the Jennings-Barry purchases] had not been reported, you have just approved the price. If you want the price raised from \$200,000 to \$275,000, I will have the \$60,000 available to pay. He said, 'Let us see that we understand it.' I made a memorandum in pencil and he said, 'That is all right, you report it at \$275,000 instead of \$215,600.' They were so re-
ported. I think a check for \$140,600 was drawn to the order of

Jennings. The \$80,000 currency in my safety deposit vault was taken out of that check, and paid over to Busse's managers. I received no part of it; received no commission, or advantage from it. The Western Indiana [the cross complainant] money had come into my hands under Thomas' direction; at his direction I paid out the \$60,000. This was the first instance where there was any difference between the price actually paid and the price reported. This sort of thing occurred thereafter in the latter part of February."

From the testimony of Fetzner in respect of the alleged contribution of \$60,000, it will be observed that Fetzner was not the passive agent of Thomas in delivering the money to Peabody, but that Fetzner solicited a contribution from Thomas at Peabody's request; that when Thomas agreed to give the alleged contribution of \$60,000, on condition that Busse would order the tracks of the General Electric Railway removed, Fetzner was the active intermediary between Peabody and Thomas in arranging a meeting between Thomas and Busse. Fetzner was a party to a transaction which was at least an agreement against public morals, if not a conspiracy to do an illegal act.

Counsel for Fetzner says that the rule is that "the mere knowledge of one party to a contract that the other party intends an unlawful use of property covered by the contract will not render him particeps criminis."

It may be granted for the sake of argument that the rule is correctly stated by counsel for Fetzner. But the rule has no application here for the reason that Fetzner was not a party to a contract who had "the mere knowledge" that the other party intended an unlawful use of property covered by the contract. Fetzner was an active participant in obtaining the property for the unlawful use. Furthermore, the contract was not between Fetzner and

Thomas, but between Fetzner and the cross complainant. Thomas had no authority to make such an agreement with Busse; and the board of directors of the cross complainant did not know that such an agreement had been made. Fetzner admitted that the alleged contribution of \$60,000 was concealed in his report by adding a false amount to the amount actually paid in the Jennings-Barry purchases. The funds out of which Thomas is alleged to have made the contribution were funds intended specifically for the purchase of real estate for the cross complainant, and it was beyond the power of Thomas to divert such funds to the payment of a political campaign contribution. Moreover, the funds were in the hands of Fetzner, as agent of the cross complainant, not as agent of Thomas; and under the well established rule of agency, the receipt of funds by an agent to be applied to a specific purpose imposes on the agent the duty not to apply the funds to another and different purpose. (Necham on Agency, sec. 1349, p. 987, 2nd ed.) Fetzner was not justified in assuming that Thomas had authority to divert the funds to another and different purpose from that for which they were intended. According to Fetzner's own testimony he knew that the alleged contribution of \$60,000 was made as the result of an unlawful bargain between Thomas and the candidate for mayor. He not only knew this, but actively assisted in bringing about the bargain. To understand the unlawfulness, if not the criminality, of the transaction, required no refined or delicate sensibilities. Every person who has grown up and been trained under the accepted ethical views of our social organization, instantly would recognize that such a transaction was plainly wrong. Fetzner reasonably could not have believed that Thomas was authorized to commit an obviously unethical or unlawful act. In the circumstances Fetzner was put upon inquiry to ascertain Thomas' authority. Having neglected to do so, Fetzner acted at his peril. The general rule is that when a

person dealing with an officer of a corporation has knowledge of facts sufficient to excite his suspicion, or raise a doubt in his mind, as to the authority of the officer, it is his duty to inquire as to the nature and extent of the authority. 14A Corpus Juris, pp. 351, 352; 3 Fletcher on Corporations, section 1928, p. 3120.

It cannot be argued properly that the cross complainant has received the benefits of the contribution, with acquiescence and approval, and is, therefore, estopped to contend that the contribution was ultra vires, as there is no evidence that the tracks of the General Electric Railway were removed.

In order to show that two contributions of \$15,000 and \$60,000 consistently could have been made by the cross complainant, counsel for Fetzer states and discusses at length evidence which he interprets as indicating the urgent necessity, for the cross complainant, that the tracks of the General Electric Railway should be removed, and argues as follows: "We repeat that whether it [the \$15,000 contribution] was an additional contribution, or whether Thomas' statement was a statement of expediency," we need not decide. Either suggestion we submit to be a sufficient answer to the contention of appellant's counsel that Delano's testimony about the \$15,000 voucher in some way overturns the force of the testimony of Fetzer and Peabody, the admission of Thomas, and the unanswerable state of mind of all the officials of the Western Indiana Road," [the cross complainant.]

We have previously stated that in our opinion the \$15,000 contribution was in fact made, and that the alleged \$60,000 contribution was not made. But assuming for the sake of argument that the \$60,000 contribution was made, we do not think that the account of Fetzer should be credited with that amount, as Fetzer,

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It would be almost impossible to give a complete
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[The above is a summary of the report.]

It is the duty of the
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according to his own testimony, actively assisted Thomas in using unlawfully the funds of the cross complainant which were devoted to the specific purpose of purchasing real estate for the cross complainant.

In order to render probable the testimony of Fetzner that the contribution of \$60,000 was made, counsel for Fetzner cites instances where Thomas directed officials of the cross complainant to make political contributions and to charge the amounts to such accounts as "track elevation" and "legal expenses."

We recognize the fact that the cross complainant did make political contributions in the way that counsel has stated. But we are not rejecting Fetzner's testimony in regard to the alleged contribution of \$60,000 on the improbability that the cross complainant would make political contributions. The reason that we have not given credence to his testimony is that the amount of the alleged contribution was not corroborated by Peabody, and the alleged contribution is inconsistent with the contribution of \$15,000.

In considering the evidence in regard to the purchases in question it must be borne in mind that under the rules of law, since the evidence shows that Fetzner was an agent of the cross-complainant, and that as such agent he had made a false report which required explanation, the burden of proof was on him to establish by a preponderance of the evidence the credit claimed by him; and that in such circumstances every doubt should be resolved against him. Furthermore, the alleged contribution of \$60,000 was made in a different way materially from the other political contributions referred to by counsel for Fetzner. Those contributions were made from the general funds of the cross complainant with knowledge or acquiescence of the directors, and

charged to certain accounts. They were not made as the alleged \$60,000 contribution was made, without knowledge or acquiescence of the directors from funds specifically devoted to the purchase of real estate for the complainant; and they were not reported to the cross complainant, as Fetzner reported the alleged \$60,000 contribution, by being concealed in false reports of purchases of real estate for the cross complainant.

It follows from the views we have expressed in regard to the purchases under discussion, namely, the Jennings-Barry purchases, that Fetzner should not be credited with the alleged political contribution of \$60,000, and should not be allowed any commissions; and that he should pay to the cross complainant the sum of \$94,650, which is the total deficit in these purchases.

It is contended by the cross complainant that in the purchases of four groups of properties designated, respectively, as Landers, Minton, Loesch and Fleming, there are deficits aggregating \$92,310, for which Fetzner has not accounted. The purchase of these properties was directly related to the purchase of the property known as the Corkery Coal Yards, owned by Mrs. Mary A. Corkery. Each of the Landers, Minton, Loesch and Fleming purchases was reported to the cross complainant by Fetzner as a separate purchase in which Landers, Minton, Loesch and Fleming were the respective vendors, and in which their receipts were returned by Fetzner as those of real vendors. The fact is that Landers, Minton, Loesch and Fleming were dummies, who each represented several vendors. In the Landers purchase there were five vendors; in the Minton five; in the Loesch six; and in the Fleming eight. It is a fact that neither Landers, Minton, Loesch nor Fleming had purchased property from any of the vendors that they purported to represent, but that Fetzner in collusion with Francis S. Peabody,

who pretended to be the real vendor, had made all of the purchases from the real owners of the properties. The only reasonable inference why Fetzner did not report Peabody as the vendor is that such a report would have shown that the respective amounts for which Landers, Minton, Loesch and Fleming receipted ostensibly as the real vendors, had not been paid in fact to the actual vendors. According to Peabody's testimony he was the vendor. He testified that he "negotiated for them, bought them and paid for them;" that his "negotiations were with the owners." He testified further, "I can recall no one with whom I myself negotiated. I think I was with the Austins [John P. Austin and Michael Austin, brothers of Mrs. Corkery] or McCormick in some of the houses of the vendors at the south end, but I cannot recall the names. I do recall how payment was made for those lots. At the time I kept books, but they were destroyed quite a long time ago." Peabody also testified that in making the sales Fetzner was representing him; that Fetzner was not representing the Chicago and Western Indiana Railroad Company [the cross complainant] in the sale of the property for him; that Fetzner was his agent in the matter; that he paid Fetzner \$15,000 or \$20,000 for making the sales.

Fetzner testified that he was not the agent of Peabody, but that he was the agent of the cross complainant. As quoted from the abstract Fetzner's testimony was as follows: "I didn't understand I was representing Peabody. Peabody certainly knew that I was representing the Western Indiana, [the cross complainant]. I went to him and told him the situation as it really was. That didn't mean that I told him that Thomas had instructed me to buy any of these lots near the Western Indiana. ** I don't remember that I explained what I had to do with the deal. I let him infer that. I am giving the substance of what I said. I didn't tell him in words that the Railroad company had employed me for it to

buy in these lots. I didn't tell him in substance, but I should think that he would infer that from what I told him." Fetzner testified further: "In a general way I should say Peabody was not putting a dollar of his money into this property. I furnished him the earnest money, and then I furnished him the entire consideration for the property." There are checks in evidence tending to corroborate this testimony of Fetzner; and the evidence shows that the bills for the guaranty policies of the titles of the properties were paid by the cross complainant, and not by Peabody. The evidence shows that in some instances Fetzner made payments directly to the vendors instead of making them through Peabody. The evidence also shows that Fetzner advanced \$15,000 of the money of the cross complainant to Peabody before he, Fetzner, was certain that the cross complainant would buy the property. In his testimony Fetzner stated that he "furnished earnest money to Peabody to go in and make these purchases, with the understanding that the Railroad company [the cross complainant] might not take the property in the end."

In this state of the evidence we do not think that Peabody should be considered as a bona fide vendor of the property to the cross complainant. The part that he took in the purchase of these properties, which was a rather complicated transaction, was an unusual one. His relation to the cross complainant and to Fetzner, and Fetzner's relation to the cross complainant will more clearly appear from the detailed statement of the evidence which we will now make. The Peabody Coal Company had a lease and Peabody had an option on the Cerkery Coal Yards, for which Peabody was anxious to negotiate a sale to the cross complainant. According to Fetzner's testimony, Thomas told Fetzner that the cross complainant did not want to buy the Cerkery Coal Yards, but that the cross complainant would buy property outside of the Cerkery Coal Yards. The properties involved in the purchases under discussion, namely, the purchases

known as the Landers, Minton, Loesch and ^{purchases} Fleming/ were so situated with reference to the Corkery Coal Yards that if the cross complainant bought the former properties, these properties practically would be useless unless the Corkery Coal Yards were also purchased.

Peabody and Fetzner had known each other intimately, both socially and in a business way, for many years. Fetzner attended to all of Peabody's real estate business. An instance of the close relations of Fetzner and Peabody has been shown by Fetzner's testimony in regard to the alleged contribution of \$60,000 to the Buase campaign fund. Fetzner and Peabody devised a plan, which was acquiesced in by Thomas, whereby both the Landers, Minton, Loesch and Fleming properties, and the Corkery Coal Yards were purchased by the cross complainant at grossly excessive prices. Fetzner's testimony in this respect, which we will quote from the abstract, was as follows:

"Peabody, I think it was in December, 1906, sent for me and said he owned the Corkery Coal Yards, that he controlled that, had it on a long time lease, with an option to buy, and he would like to have me sell it to the Chicago & Western Indiana [the cross complainant], that they were going to purchase all the way down to 29th street. I told him that my dealings both with the Western Indiana [the cross complainant] and the Wabash in that had closed, that I had had nothing at all since August or September, when my purchases were closed; that I had bought nothing for the Western Indiana in that locality, all I had purchased up to that time was the three yards; that the Wabash purchases had been entirely closed, but that I would see Thomas if he wanted me to. He said, 'Yes, and they are ready to buy.' I went down to see Thomas and he told me they were not ready to buy, were not in the market, and were not going to purchase any more in that locality. He was very frank, said it would probably be some time before they bought anything in that locality. I came back and reported it to Peabody, and I guess

purposes

years of the Republic, during which the Government was in a position to pay out more than it took in, it was not only a financial success but a political one, for it showed that the Government was able to manage its affairs with a degree of skill and economy which was not to be expected of a young nation.

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from that time on I saw Thomas on an average of possibly once a week, hardly think that often, once in ten days, at Peabody's request and earnest solicitation. Every time Thomas assured me that the company had no idea of buying it. So when I was sent for to buy the property it was somewhat of a surprise; as I remember it now Thomas said that the directors had taken it up and decided to go ahead at this time, but that they would not buy the Keller Coal Yard, the Hafer & Son Coal Yard, nor the Cerkery Coal Yard, but that they would purchase so much of the property as they could get for a reasonable price but for the present I should keep north of 26th street. That was in the conversation on 30th of January. I don't remember that I told Peabody then what Thomas said, but a few days after Thomas asked me if I had done anything between 26th and 29th streets, outside of the coal yards. I told him I had not, and that Peabody had the Austins in his employ down there, and they lived there, and I thought the best way, if we could get Peabody to do it, was to get a price at which he would purchase this property, and deliver it to us; if we did not, he would get in there, and it would cost us more money than I believed we could purchase for in this way. Thomas said the price would have to be satisfactory to him anyway before anything could be done. And he said, 'You see what you can do, if you think that is the best way to do.' I told him I did think it was the best way to do because if he went in back of Peabody I thought it would cost us more money than to go in openly. I then went to Peabody and showed him how if the Western Indiana bought this outside of the coal yard that they would have to either make some deal in exchange for this land and the coal yard, taking that part of the coal yard near the tracks, and giving an equal area farther out, and including the trackage, or if they would be bound to buy it, and be more to his interest: that I could

not buy it unless the prices were satisfactory; that if he could get prices on this property, and name them to me, that I could get Thomas to approve. I could get the authorization to purchase this property, outside of the Corkery Coal Yard, being all of the property running out to Canal street, between Western Indiana and Canal street. I told him I would have to have it in blocks, that I was buying north of 26th street, and didn't want to go any further south; in other words, we didn't want any property between the two places we had not bought, that would hold us up, we wanted to be where we could stop at any time, and for him to get me a proposition, of Block 1, first. I mean by Block 1, the first block south of 26th street. Witness proceeds to indicate on map. I think the Rath estate owned lots in this block, and in the next one, so that in getting price I really got the price on Block 1 and Block 6 practically at the same time. The prices were submitted to Thomas, discussed and approved by him, and purchases made as fast as he could get them up. Peabody had options or a contract, I don't remember, and he seemed to know the prices when I first went to see him, what he could deliver them for. When I went to see Peabody it was my honest judgment that I could make a better bargain for the Western Indiana than otherwise, by buying through him. As I explained to Peabody, it was to his interest to sell property to the Western Indiana [the cross complainant] and that his interest would suggest that in order to make a sale to make the price as low as he could, because he undoubtedly had the profit in the Corkery Coal Yard which he was exceedingly anxious, and trying to sell to the Western Indiana [the cross complainant]. I don't think I met either John or Mike Austin in this connection, until after these sales were entirely completed. I never met McCormick. I do not remember prices Peabody quoted me, but Peabody asked me, when I asked him to name prices in there, what

commissions I wanted, and I told him I wanted 5 per cent commission for selling it to the Western Indiana Road [the cross complainant], that I got no commission from them; and he named the price which was the price at which I reported it to the Western Indiana [the cross complainant.] Thomas usually complained at first about the prices. It was a very low price. We approved of them before we purchased them. In a number of cases pieces were not always taken at the price that Peabody asked. Peabody named a price afterwards on Block 7, and in doing it the way Thomas insisted, and go down a block at a time, when Peabody got some lots in Block 12, he named a price, and Thomas said he didn't think he would take anything in Block 12 for the present; and Peabody named me a lower price if I could get them accepted by Thomas, and I did. I think the prices asked by Peabody in the blocks north of that were accepted. I made payment in checks for substantial amounts, as he would need them, in closing up with the Chicago Title & Trust Company. I have the checks."

Fetzer testified further that he said to Peabody, "Now if you can buy this cheap enough, Thomas will take them, and if he takes them, it seems to me it makes it almost a cinch that he will have to have that Corkery Yard, and it is to your interest to make the price pretty cheap; and he said 'I will see what I can do right away, John,' and he made me the prices, and I reported the prices to Thomas." Continuing his testimony Fetzer stated: "I thought the railroad would make money by doing it this way rather than to go in and try to undermine Peabody with the facilities he had, knowing the instant anybody inquired. I mean undermine Peabody in his business, that is all, buying railroad property. I don't think what I did was to permit Peabody to undermine the railroad. I thought that Peabody was in a position to buy cheaper than outsider, that he could afford to make it practically without profit in order to get the railroad to invest this amount of money back behind the Corkery

Yard as the Corkery Yard would be between their property and their tracks, if he wanted to sell the Corkery Yard, which he had been telling me he did, to the railroad [the cross complainant]. ** He could have well afforded to turn it in at any price, at the price that he paid, and I thought he did practically at the time. *** From what has been brought out, he made more money than I had any idea he did. I didn't take any pains to find out how much money he was making at the expense of the Railroad company [the cross complainant] because I knew the value of the property, what it was costing in a general way, and I got the approval of Thomas before I ordered any blocks purchased. The important fact was what the vendor was willing to pay, not what Peabody was willing to turn it in at. If I could have got at the vendor without Peabody, but I didn't feel I could get my agent into these blocks and make the purchases, as a real estate man, instead of having Peabody as a middleman. ** The purchase of the lots would equally have enhanced the price at which the Corkery property might be sold to the railroad [the cross complainant]. But Peabody would have felt different toward the railroad. I think he would have made a larger rake-off if we had done it in the regular way than in the way we did. ** Thomas when he made me my first advance on this deal, didn't understand that I was to furnish Peabody with earnest money to make these purchases. I took the chance myself."

In the transaction in question, namely, the purchases
known as Landers, Minton, Lorsch and Fleming/^{purchases} we are of the opinion that Fetzner and Peabody perpetrated a fraud on cross complainant. We think that Fetzner was the agent of the cross complainant and not the agent of Peabody; that Peabody was not the real vendor of the property, but merely acted in concert with Fetzner to accomplish the fraud. In our view Fetzner was guilty of disloyalty to the cross

complainant, and betrayed the interests of the cross complainant. Both Peabody and Fetzner shared in the \$92,310, which was the amount that the cross complainant paid in excess of the actual amount disbursed by Fetzner. The evidence shows that Fetzner received at least \$15,000, under the guise of commissions. Apparently Peabody received the remainder. Fetzner testified that the \$15,000 which he received as commissions was divided between him, Fetters and Kappes.

In computing the amount of the deficit in the purchases in question the cross complainant, in a number of instances, showed by the testimony of the real vendors the amounts that they actually received; and where the real vendors did not testify the amounts were estimated by taking the price per square foot of property of the same general character and value. Neither Fetzner nor Peabody testified that any of the amounts were incorrect; nor did they offer any evidence as to what the real vendors actually received. In view of the fraud perpetrated against the cross complainant by Fetzner and Peabody, the cross complainant was entitled to the properties at their fair cash market value. As the evidence of the cross complainant in respect of the value of the properties was not objected to or disputed by Fetzner, we are of the opinion that the evidence may stand as the prima facie value of the properties. We think that Fetzner should be ordered to pay to the complainant the sum of \$92,310.

In the purchase of the Corkery Coal Yards, Fetzner reported to the cross complainant that the price paid for the property was \$750,000, when in fact the actual price paid was \$600,000. The difference of \$150,000 was divided between Fetzner and Peabody - Fetzner receiving \$50,000 and Peabody \$100,000. The property was owned by Mrs. Mary A. Corkery. In this transaction Fetzner pretended that Joseph B. Flemming, a clerk in his office, who was used as a dummy

by Fetzner, sold the property to the cross complainant. The deed from Mrs. Corkery was made to Fleming, and Fleming executed a mortgage on the property to Mrs. Corkery. The evidence showed receipts of Mrs. Corkery for \$250,000 in bonds of the cross complainant, and \$200,000 in cash; the evidence also showed a receipt of the Peabody Coal Company for \$100,000 in bonds for the cancellation of a lease which that company held on the property; and the evidence further showed that a mortgage of \$200,000 was assumed by the cross complainant, making a total of \$750,000 alleged to have been paid for the Corkery Coal Yards. Fetzner admitted that he never reported the receipts of Mrs. Corkery to the cross complainant. He testified that he gave them to Fleming. The auditor of the cross complainant, when he learned that Fleming was Fetzner's clerk, refused to accept Fleming's receipts as receipts of the real vendor of the property; and Fetzner then gave Mrs. Corkery's receipts to Kappes and Kappes delivered them to the auditor. This part of the transaction will be explained more fully later. It is an undisputed fact, however, that instead of receiving \$250,000 in bonds and \$200,000 in cash, Mrs. Corkery received only \$100,000 in bonds and \$200,000 in cash. In respect of these false receipts Fetzner testified as follows: "As far as the railroad [the cross complainant] was concerned she [Mrs. Corkery] got the 250 bonds represented by the receipt for \$250,000 in bonds, which I say she signed. So far as I was concerned she did not." Although Fetzner testified on the trial that Mrs. Corkery only received \$100,000 in bonds and \$200,000 in cash, he alleged in his amended answer to the cross bill of the cross complainant that Mrs. Corkery received \$500,000, including a mortgage of \$200,000. It was necessary, therefore, on the trial for Fetzner to account for \$150,000. He attempted to account for it by testifying that as part of the transaction the cross complainant paid \$150,000 to

Peabody for an option held by Peabody on the Corkery Coal yards. No mention, however, was made by Fetzner of such a payment in his report to the cross complainant. It is obvious that if such a payment was made, Fetzner concealed the fact by producing receipts of Mrs. Corkery which falsely recited that she had received \$150,000 more than she actually did receive. But if the payment of \$150,000 to Peabody for his option was really made, there is no valid reason why Fetzner should cover up the payment by falsely including in Mrs. Corkery's receipts \$150,000 more than she received. Peabody denied that he received \$150,000 from the cross complainant for his option on the Corkery Coal Yards. He stated that the cross complainant paid the Peabody Coal Company \$250,000 for its lease on the Corkery Coal Yards. Yet there is in evidence Peabody's personal receipt to the cross complainant for \$150,000 in bonds of the cross complainant for his option on the Corkery Coal Yards; and also a receipt of the Peabody Coal Company to the cross complainant for \$100,000 in bonds of the cross complainant for the cancellation of the lease of the Peabody Coal Company on the Corkery Coal Yards. Fetzner never delivered to the cross complainant the receipt of Peabody for the \$150,000 for the option. On the trial Peabody's attention was called to the receipt of \$100,000 for the cancellation of the lease, but he stated that he was unable to explain why the receipt recited \$100,000 as the consideration for the cancellation of the lease, if \$250,000 represented the value of the lease.

In our view of the evidence the value of the lease was not estimated at \$250,000, but at \$100,000. Fetzner testified that Peabody estimated the value of the unexpired term of the lease on the rental value of the property and on that basis fixed the value of the lease at \$100,000. In a letter to Thomas, Fetzner

stated that he "hoped to" get the lease for \$100,000. Fetzner's testimony and letter, which are corroborated by the receipt of the Peabody Coal Company for \$100,000 for the cancellation of the lease, are convincing that the value of the lease was \$100,000 and not \$250,000, as claimed by Peabody. It follows then that the \$150,000 deficit which represents the difference between \$750,000, which Fetzner reported as the cost of the Corkery Coal Yards, and \$600,000, the amount which is shown by the evidence to have been actually paid, cannot be accounted for on the theory that \$250,000 was paid for the lease. Fetzner does not so contend. Fetzner does not adopt Peabody's testimony that the value of the lease was \$250,000, but attempts to account for the \$150,000 by maintaining that \$150,000 was paid for the option of Peabody on the Corkery Coal yards.

But the evidence shows that the option of Peabody was valueless. Peabody obviously recognized that the option was worth nothing when he testified that "the lease of the Peabody Coal Company was what we got \$250,000 for." The option was for \$650,000; and the fact is undisputed that Mrs. Corkery received only \$500,000, and never at any time asked more than \$500,000 for the Corkery Coal Yards. Furthermore, the option had expired at the time that Thomas made his report to the board of directors of the cross complainant that negotiations had been concluded in respect of the purchase of the Corkery Coal Yards.

The inference is unavoidable that Fetzner falsified his report to the amount of \$150,000. According to Fetzner's testimony he received \$50,000 of this amount and Peabody \$100,000.

Thomas and Kappes assisted Fetzner in accomplishing this fraud on the cross complainant. Kappes was an assistant of Thomas. Kappes had a desk in Thomas' room before he was given a separate room. According to Kappes' testimony "at the very

beginning of my relations with the company Mr. Thomas instructed me to report to him and to him only and to furnish no information to any person or officer or otherwise, without his express permission." Before the purchase of the Corkery Coal Yards, Fetzer wrote a letter to Thomas in which he stated: "Now the Peabody Coal Company has an actual cash investment for their recent improvements of \$55,000, and Mrs. Corkery's home could not be built for less than \$20,000. Peabody's lease is for 15 years and I hope to get it for \$100,000, which is a small profit. Peabody's option for purchase is for \$650,000, or counting nothing for improvements is less than \$3.50 per square foot, and if the whole could be gotten for \$750,000 and figure nothing for the improvements it is less than \$4.00 per square foot and you cannot pick up and join the separate pieces together in this vicinity for less than \$4.00 per square foot."

The lease did not have 15 years to run but only approximately 7 years. We have shown that the option for \$650,000 was valueless; that Mrs. Corkery's price was never more than \$500,000.

In a report to the board of directors of the cross complainant, Thomas stated that "the Road [the cross complainant] through the agency employed by the Wabash Company, Messrs. Fetzer, Peters and Company, continued to make purchases as rapidly as possible ** and that negotiations had been concluded with the Peabody Coal Company and the 'Corkery Estate'"; that the Peabody Coal Company had a lease on the property for 15 years with an option to purchase for \$650,000 within the two years and that the price finally agreed on for the property, including the cancellation of the lease of the Peabody Coal Company, was \$750,000.

It will be observed that Thomas repeats Fetzer's misstatement as to the length of the unexpired term of the lease, and

also pretends that the worthless option had a value of \$650,000. He further incorrectly states that the option covered a period of two years, when in fact the option had expired when the report was made.

The report of Thomas excludes the idea that Thomas was treating Fetzner as the agent of Peabody, or that ^{the} Corkery Coal Yards were purchased directly from Fetzner. If Thomas understood that the purchase of the Corkery Coal Yards was from Peabody through Fetzner as Peabody's agent, there was no possible reason for stating, as he did, that negotiations had been concluded with "the Corkery Estate;" and if Thomas was making the purchase directly from Fetzner there is no explanation as to why Thomas referred to Fetzner, Peters and Company as the agency through which the cross complainant was making the purchase.

In his false accounting for the purchase of the Corkery Coal Yards Fetzner returned to Thomas the receipt of Fleming for \$50,000 cash and \$500,000 as proof of the expenditure of the amount of \$550,000, which Fetzner had received from the cross complainant for the purchase of the property. Thomas turned these receipts over to Kappes and Kappes in turn gave them to Michael J. Murphy, the treasurer of the cross complainant. In respect of Fleming's receipts, Murphy testified as follows: "By inquiring of Mr. Kappes I learned that Mr. Fleming was employed in Mr. Fetzner's office. I told Mr. Kappes that I was not satisfied with Mr. Fetzner's receipt or Joseph B. Fleming's receipt as showing the disposition of the money, and I would have to have the seller's receipt." Murphy testified that he called the attention of Michael J. Clark, the auditor of the cross complainant, to the matter of the receipts. Clark wrote Kappes as follows: "The Treasurer has no receipts from the sellers of this property on file. As you know this company

requires receipts from the sellers, or the cancelled checks covering the disbursements." Kappes forwarded Clark's letter to Petzer with the following notation on the letter: "Mr. Petzer: Please note and advise with return of this letter." Petzer answered as follows: "Referring to Mr. Clark's letter of the 11th inst., Mr. Flemming is the man who sold that land and you have his receipt. This had to be done in order to get the mortgage placed on the land. I will be glad to show the expenditures by Mr. Flemming to Mr. Clark or his representative at any time but these belong to Mr. Flemming and are his only protection."

Murphy told Kappes that he would not credit Petzer's account with anything less than original receipts. Petzer then turned over to Kappes typewritten copies of purported original receipts held by Flemming. Murphy told Kappes "a typewritten copy of a receipt was of no value" and that he, Murphy, "could not credit Petzer's account on such evidence." Petzer finally turned over to Kappes the two false receipts of Mrs. Gerkery for \$250,000 in bonds and \$200,000 in cash, and also the receipt of the Peabody Coal Company, which recited that the consideration for the cancellation of that company's lease was \$100,000. These receipts were accepted by the auditor and stood as Petzer's report until the true facts were disclosed on the trial.

The evidence shows that Thomas and Kappes both knew when the first purchases of properties were made by Petzer under his original agreement with the cross complainant, that the auditor of the cross complainant required the receipts of the "original sellers" of the properties. Kappes testified that he "did not understand that 'original sellers' meant Petzer. Kappes testified further that in a conference with Thomas in connection with purchases "at Hayford between West 12th and 22nd streets," South Chicago, he told Thomas that the receipts of the original sellers

could not be obtained according to "the conditions under which these purchases were being made;" and that Thomas said, "I understand that, but satisfy the auditor if you can;" that Thomas did not say why he should satisfy the auditor "as to what the original sellers obtained;" that Thomas just wanted him, Kappes, "to satisfy the auditor's office in any way that he could;" that he, Kappes, called Thomas' "attention to the fact that Mr. Fetzer was the real vendor." Kappes testified further as follows: "I told Mr. Thomas frequently that the reason I couldn't get receipts from the original sellers was because I was buying for Fetzer. He told me to do the best I could, talk to Fetzer about it, write some letters that would straighten out the matter - anything that would keep the auditor quiet, because there were expenditures being made which he did not care to publish. I did not know personally of such expenditures. It was pretty much in the air. That is the best I can do by way of answer. ** I knew that the prices, particularly in the purchases I handled, were not the prices which I had paid, that if larger sums were being paid ostensibly to Fetzer, it was not because he was vendor and making a profit, but because they wanted to hide the use of moneys of the Western Indiana [the cross complainant]. That was all included. I do not know what he was to do with it after he got it. I do not know what the purpose was in making the books show larger amounts had been paid than had actually been paid. ** The Railroad Company [the cross complainant] did not know that I was paid, nor did they pay me any commissions. I think my commissions had a bearing on the amount reported as the purchase price. I did not report to the Railroad company [the cross complainant] that property had been bought at a certain price, out of which I had received a certain commission."

It is contended on behalf of Fetzer that in the purchase

of the Corkery Coal Yards Fetzner was not the agent of the cross complainant. Peabody testified that Fetzner was his agent and that he told Fetzner that if he, Fetzner, would sell the property for him for \$750,000, he would give him, Fetzner, \$50,000.

In determining the question of agency the purchase of the Corkery Coal Yards must be considered in connection with the purchases known as Landers, Minton, Loesch and Fleming. These latter purchases were made for the purpose of forcing the cross complainant to buy the Corkery Coal Yards. As we have previously stated, we are of the opinion that under the original agreement with the cross complainant, Fetzner was the agent of the cross complainant in all of the purchases of the properties that he made for the cross complainant; that in attempting to change that agreement Thomas acted without authority of the board of directors; and that the board of directors did not have any knowledge that Fetzner was acting otherwise than as agent for the cross complainant. There are specific facts, however, in regard to the purchase of the Corkery Coal Yards which indicate that Fetzner was acting as agent. The purchase money was not paid to Fetzner as an independent vendor, or as an agent of Peabody, but was given to Fetzner on his receipt to be disbursed by Fetzner for the cross complainant. The bill for the guaranty policy of the title of the property was paid by the cross complainant and not by Fetzner or Peabody. Furthermore, Fetzner made a report of the purchase of the property to the cross complainant and submitted receipts to the auditor of the cross complainant for the approval of the auditor. There is also another fact which tends to negative the idea that Fetzner was Peabody's agent, or at least to raise a doubt as to such ^{an} agency, and that is the testimony of Fetzner that Peabody said that he "couldn't raise \$150,000 and take bonds;" that if he, Fetzner, could raise \$150,000, he, Peabody, thought the deal

would go through; and that he, Fetzner, said he would see if he could, and agreed to raise \$150,000 and take bonds at par. Fetzner further testified as follows: "In connection with the Gerkery transaction I borrowed \$100,000 in one item, from myself as receiver of the Milwaukee Avenue State Bank." We make no comment on the ethics involved in this use of trust funds by Fetzner. But the fact that he told Peabody that he would raise \$150,000 and did obtain \$100,000, can hardly be reconciled with the theory that Fetzner was Peabody's agent. Another circumstance which indicates that both Fetzner and Thomas knew that Fetzner was acting as agent for the cross complainant is the following statement in Fetzner's letter to Thomas which we have previously quoted: "Peabody's lease is for 15 years and I hope to get it for \$100,000 which is a small profit." The only reasonable construction that may be placed on this statement is that Fetzner was acting for the cross complainant, and hoped to get Peabody's lease for the cross complainant. The statement will not admit of the absurd interpretation that Fetzner, as Peabody's agent, hoped to get Peabody's lease for Peabody.

We have pointed out heretofore the fact that the report of Thomas to the board of directors in regard to the purchase of the Gerkery Coal Yards excludes the idea that Thomas considered Fetzner as the agent of the cross complainant when the report states the cross complainant was making purchases through the agency of Fetzner, Peters and Company.

Although we have discussed the question of agency as if the transaction was free from fraud, and have expressed the opinion that there was no agency, yet we think that the real question to be determined on the evidence is one of conspiracy. In this respect counsel for Fetzner takes the following position: "It is, however, sufficient for the purposes of this statement to point out that the

claim that the appellant was over-reached in this case [the purchase of the Corkery Coal Yards] again depends as to all the other like claims, upon the assumption that Mr. Fetzner and Mr. Thomas were conspirators striving to rob the appellant company, and with that assumption disproved it becomes evident that the Railroad company [the cross complainant] and Mr. Thomas, having had notice of Fetzner's relations to the Corkery property and making the proposition of sale in the form of a direct sale and not of an agency, dealt with Mr. Fetzner with its eyes open."

Our answer to this argument is that we are of the opinion that Fetzner and Thomas were conspirators; and that Fetzner was the agent of the cross complainant and guilty of disloyalty even on the theory that there was no conspiracy. We are further of the opinion that Peabody and Kappas were co-conspirators with Fetzner and Thomas. In this view it follows that Fetzner is under the legal duty to pay to the cross complainant the sum of \$150,000.

In connection with the purchase of the Corkery Coal Yards there was a transaction referred to as the Cobb transaction, by means of which the cross complainant was defrauded of \$40,000 by Fetzner and Thomas under the pretense that the money was to be used by Thomas for "railroad purposes." The \$40,000 was paid by the cross complainant to Edgar B. Cobb for the purchase of four lots, which were purported to be owned by Cobb. It is undisputed that Cobb, who was a clerk in Fetzner's office, was not a bona fide owner of the lots, and that the transaction was devised merely for the purpose of concealing the payment of the \$40,000 to Thomas. According to Fetzner's testimony the scheme employed was as follows: In the purchase of the Corkery Coal Yards by the cross complainant, Fleming, who as we have previously stated, was a dummy and a clerk in Fetzner's office, did not convey to the cross complainant all

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of the lots which had been conveyed to him by Mrs. Corkery, and for which the cross complainant had paid, but withheld four lots. These four lots Fleming conveyed to Cobb and Cobb in turn conveyed them to the cross complainant for \$40,000. The checks for the \$40,000 were paid to Cobb by the cross complainant, and were endorsed by Cobb to Fetzer, who obtained the \$40,000 and paid \$30,000 to Thomas in currency and \$10,000 by check to Kenley.

As a consequence of the fraudulent Cobb transaction the cross complainant paid for the four lots twice, as they had already been paid for in the purchase of the Corkery Coal Yards. Adding the \$40,000 paid for the four lots to the \$750,000 which Fetzer falsely reported as having been paid in the purchase of the Corkery Coal Yards, the total amount paid by the cross complainant for the Corkery Coal Yards was \$790,000. As the actual price of the Corkery Coal Yards was \$600,000, the cross complainant paid \$190,000 in excess of the price. Furthermore, the cross complainant paid for a guaranty policy of title on the four lots just as if the transaction had been a bona fide purchase from Cobb.

The testimony of Fetzer in respect of the Cobb transaction, as the testimony appears in the abstract, is as follows:

"Thomas said that the matter the railroad had up required more money than he anticipated when he started in on it, and wanted to know if it couldn't be taken care of in the Corkery deal. I said I didn't see how it could, not one cent. There were options in it and it would bring Peabody in it and Mrs. Corkery and I did not see how it could be done at all." He said we will fix up that later, 'but I will have to have some more money.' I said, 'Well, I will see. We will talk that over.' He didn't say anything more about it that day. When I come to see Mrs. Corkery's title, four of the lots had come in and there was a title coming from the railroad in another title, and I told Thomas that I could report them as a

separate transaction entirely, and I said the valuation of the lots is about \$40,000, and you can report it at \$40,000, and that will take care of \$40,000 of the money I advanced you. He said, 'I must have that in addition to what you have already advanced me. The railroad [the cross complainant] has spent the money, or has agreed to spend it, and the only way to charge it is to charge it to real estate account; and you are doing the work for us; it must go through the real estate account.' I said, 'All right.' I reported the four lots that were in the Corkery deal separately as another transaction at \$40,000; and \$30,000 was given to Thomas; and \$10,000 to Henley at Thomas' direction. That is the \$40,000 referred to as the Cobb purchase by him. I already had \$60,000 paid out, and no vouchers for it. I had been carrying it for sometime, so that if anything happened to Thomas I would have no proof, so when the \$30,000 was added to it, I was to get credit for \$40,000 on the books of the company at once, but I wanted to know if he paid it. So I took Cobb with me. I think Cobb got the \$30,000 as a matter of fact. Anyway we talked it over in my office, and in the presence of Cobb I put it in an envelope and went into Thomas' office and came out and showed him that I didn't have it. That was the only proof I could have. Cobb went with me to Thomas' door. Thomas told me to give \$10,000 to Henley in currency. Cross complainant's exhibit 246 is the \$30,000 check on which Cobb got the \$30,000. The currency obtained on the \$10,000 check was held until Henley called at my office for it, and when he called I gave him the check and he says 'I was to have this in currency.' I said, 'I guess you are mistaken about that, you can take my check.' 'No,' he said, 'the understanding was I was to have currency, and Thomas said I was to have it.' I said, 'You better take this matter up with Thomas.' He said he would call Thomas up. I knew Thomas was not in his office,

so I agreed that he should call him up. He called Thomas and Thomas was not in. He said, 'all right, it doesn't make any difference;' so he took the check, and I redeposited the \$10,000 cash to my credit in the bank. *** I received no part of it, or benefit from it, or from the \$30,000 given to Thomas."

We are of the opinion, as heretofore indicated, that if the \$40,000 was given to Thomas at all, it was not given to him for "railroad purposes," but was given to him collusively by Fetzner for Thomas' own personal use. That Fetzner doubted that the \$40,000 was to be used for "railroad purposes" is shown by the fact that when he gave the money to Thomas he took Cobb with him to the door of Thomas' office. The only permissible inference from this circumstance is that Fetzner did not believe that Thomas wanted the money for "railroad purposes."

In the view we have taken of the Cobb transaction it follows that Fetzner should pay to the cross complainant the sum of \$40,000.

In the purchase of the properties known as the Keller-Hafer Coal Yards, there was a deficit of \$135,000 between the amount reported by Fetzner and the amount actually paid the vendors. This deficit was admitted by Fetzner. He attempted to account for it by testifying that he gave \$15,000 to Thomas and Hanley for "railroad purposes;" that he retained \$65,000 himself to cover amounts which he had previously advanced to Thomas and Hanley; that he also retained \$25,000 for "financing" the Keller-Hafer transaction; and that he further retained \$30,000 for his commissions, out of which \$30,000 he gave Kappes \$11,000 in bonds.

The properties were reported to the cross complainant by Fetzner as a single purchase, although the properties were separate and distinct, and were owned by different owners, Theodore C. Keller owning one of the coal yards and Henry Hafer the other.

Fetzer reported the price of the properties at \$600,000, of which sum \$275,000 was in cash and \$325,000 in notes secured by mortgages. The deeds to the properties were taken in the name of Fetzer's partner, Peters, who executed mortgages in the total amount of \$325,000. Subsequently the cross complainant delivered its bonds to Fetzer with which to take up the mortgages. Fetzer returned to the cross complainant a purported receipt from Keller for \$200,000 in cash, and a receipt of Hafer for \$75,000 in cash. Keller testified that he never signed the receipt for \$200,000 in cash, and never received \$200,000 in cash; that he received only \$50,000 in cash and \$275,000 in bonds of the cross complainant. Hafer testified that he received \$75,000 in cash and \$65,000 in bonds of the cross complainant. On the trial Fetzer did not deny these amounts testified to by Keller and Hafer. On the undisputed evidence, therefore, Keller and Hafer received in the aggregate \$465,000 instead of \$600,000, as reported by Fetzer. In addition to the amount paid to Hafer the cross complainant conveyed to Hafer, as a further consideration, four lots purchased from Keller adjoining the land conveyed by Hafer to the cross complainant, and equal in area to the land conveyed to the cross complainant by Hafer; and also as a further consideration to Hafer the cross complainant entered into a contract with Hafer giving Hafer trackage facilities.

We are of the opinion that the evidence in regard to the purchase of the Keller-Hafer Coal Yards not only shows a deficit of \$135,000, which is admitted by Fetzer, and which we will discuss later, but also shows that Fetzer, Thomas, Henley and Kappes collusively induced the cross complainant to purchase the Keller-Hafer Coal Yards at an excessive price.

Keller testified that about a year and a half before the Keller-Hafer purchase, Thomas asked him what he wanted for his

property, and that he told Thomas \$250,000; that Thomas said, "Too much," he could not use it; that subsequently Thomas again wanted to know what he would take for his property, and that he, Keller, said \$300,000; that Thomas smiled and said he could not pay it; that at a still later date J. B. Brown, a former president of the cross complainant, called on him, Keller, and told him he had come to see him about his, Keller's, property "on behalf of Mr. Fetzner and the Railroad" (the cross complainant); that Brown told him, Keller, that he, Brown, had told Fetzner or had told Thomas, that they didn't know him, Keller, that they didn't appreciate the business he, Keller, was doing, and what that Yard meant to him; that Brown said to him, Keller, "Now, Theodore, I would accept \$325,000 and go and buy a yard somewhere else and end this difficulty and your losses having to go on the team track;" that Brown himself named the sum \$325,000; that he, Keller, said to Brown, "Mr. Brown, if they will come in and close this thing up for \$325,000 right away, they can have the property;" that this "was the first time that the sum of \$325,000 had ever been named between us;" that his, Keller's, "last offer to Mr. Thomas had been relative to a sale by him [Keller] for \$300,000;" that he, Keller, does not remember of dealing with Fetzner before; that after this conversation with Brown, he, Keller, did see Fetzner and did mention the price of \$350,000; that Fetzner said, "You offered it to Brown just a short while ago for \$325,000." Keller also testified that he might have asked the same price from Brown as he did from Fetzner. The price of \$325,000 is the price at which Fetzner purchased the Keller Coal Yards for the cross complainant.

Before the purchase of the Keller-Hafer Coal Yards Fetzner wrote to Thomas on April 12, 1907, as follows:

"The following proposition is made by myself individually and based on the oral agreements had with different parties by

myself, but I am confident I can carry them out. I can purchase the entire premises known as the Keller Coal Properties and the Hafer Coal Properties, being all of the properties between 23rd street and the Catholic Church and the Railroad and Canal Street, - not now owned by the Railroad Company, - for \$600,000, of which amount I think I can get along with \$200,000 cash and \$400,000 in 4% bonds of the Chicago & Western Indiana Railroad Company. This is practically \$6 per square foot. This price is not made by the parties themselves, nor could such a low price be obtained from them by anyone, but the price is based upon an exchange of properties with these people and paying cash in addition to the purchase of the properties which I am to exchange. Neither of these men has made any price for the sale of his property but ⁱⁿ my negotiations I was able to present to you this proposition as from myself and am satisfied I can carry it out."

Fetzer and Thomas both knew that the statement that "Neither of these men had made a price for the sale of his property" was false. On the same day that Fetzer wrote the letter just above quoted, Hanley wrote the following letter to Thomas:

"Replying to your inquiry in regard to the reasonableness of the price at which the property owned by Hafer and Keller had been offered to you. I have gone into this matter thoroughly in the past six months, and the best prices obtainable for the two pieces was \$600,000 for the Hafer property and \$400,000 for the Keller tract. The last time I talked to Mr. Hafer, he withdrew his property from the market, saying that the profits from his coal business at this location were such that he would not consider any sale. I would strongly recommend the purchase of the two tracts named at \$800,000 if the same can be arranged. It is certain that delay in this matter will not lessen the price."

The statement in Kenley's letter that \$400,000 was the best price obtainable for the Keller Coal Yards was false, as we have shown that Keller never asked a price as high as \$400,000; that the highest price that Keller personally ever named was \$350,000; that \$325,000, the price proposed to him by Brown, was the highest price that was ever submitted to him, and that Keller never named the price of \$350,000 until Brown had proposed the price of \$325,000. In respect of the \$200,000 which Kenley mentions Keller testified as follows: "If Kenley wrote to Thomas that my price was \$400,000, I have no knowledge of where he gained that impression. I don't remember of ever hearing of such a price as \$400,000."

The day after the letter of Kenley was written, Kappen wrote a long letter to Thomas in which he stated as follows:

"The proposition submitted by Hafer a few weeks ago was for exchange of property by which the Western Indiana Company was to give Hafer property along So. Canal street immediately west of the tracks. To do this would involve crossing 23rd place and 24th street with Hafer's side tracks and he positively refused to entertain a proposition that involved two street crossings. In other words, he declined to consider any property south of 24th street. His proposition was that we give him a strip 125 feet wide extending from the south line of 23rd street to the north line of 24th street and pay him \$225,000 in cash and pay for the construction of the trestles and sidetrack. This would necessitate the railroad's buying 125 feet on the south side of 23rd street and 25 feet on the north side of 23rd place from Keller. In addition Hafer demanded the same standing room for cars he now has, and switching rights on the railroad's lead from 26th street. Hafer places the cash value of \$600,000 on his present holdings. Hafer's present proposition is for the outright purchase for

\$450,000."

Two days after writing the above letter Kappes again wrote to Thomas as follows:

"In re Keller coal yard, consisting of 273 feet frontage on the south side of 23rd. 173 feet on the north side, various negotiations with Keller have been declined by him. Keller recently obtained an ordinance for elevated switch tracks which would seriously conflict with proposed team tracks. Keller may start suit if connection denied. Mr. Fetzner succeeded in getting proposition from Keller for an outright sale of his yard for \$350,000. It seems desirable to acquire Keller property under this proposition."

Kappes' statement that "various negotiations with Keller had been declined" by Keller and that Fetzner had succeeded "in getting a proposition from Keller for an outright sale of his Yard for \$350,000" were both false, as we have seen that Keller agreed to accept Brown's proposal of \$325,000.

The day after Kappes' letter just above quoted, ^{was written,} Thomas wrote a letter to Delano, in which the following statements were made: "Hafer wanted \$600,000. Fetzner refused. The price was reduced to \$450,000, which Fetzner agreed to submit to the company. ** I think we would be justified in paying Mr. Hafer \$450,000 for his coal yard and that we would never have cause to regret it." The letter of Thomas was based on Fetzner's letter of April 12, 1907, which we have set out above.

On April 17, 1907, Delano replied to this letter of Thomas and stated: "When it comes to Hafer \$450,000 is a pretty stiff price, and yet I believe it would be fully justified if it were not for the money conditions. I guess Hafer would like \$450,000 just as much as the next man. We can afford to stand him

1900, 1901.

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off a little, and not be very anxious to give him accommodations in the way of service, side tracks, etc." Thomas made the following notation on Delano's letter: "At a conference March 18, after going over the whole matter thoroughly, Mr. Delano and I agreed Hafer's yard should be purchased." It will be observed that the conference which Thomas mentioned is stated to have taken place on March 18, nearly a month prior to Delano's letter of April 17, which advised Thomas that they could afford to stand Hafer "off a little." Moreover, the Keller-Hafer Coal Yards were not purchased on the terms stated in Fetzer's letter of April 12, 1907, to which we have previously referred, and which was the basis of Thomas' letter to Delano. Further negotiations took place after April 12, 1907, Fetzer testified that on April 16, 1907, he had a conversation with Thomas in which Thomas asked him to include ⁱⁿ the Keller-Hafer purchase \$80,000 to cover \$15,000 to be used by Thomas and Henley for "railroad purposes," and \$65,000 previously advanced to Thomas and Henley by Fetzer for railroad purposes; that he, Fetzer, thereupon on April 25, 1907, wrote to Thomas submitting a new proposition, as follows:

"Based on my successfully carrying through the verbal negotiations I have had on, I beg on behalf of myself to make you the following proposition for the premises known as the Hafer and the Keller Coal Yards, and specifically described as follows: I am able to deliver to you: The West half of Lot 4, Lots 5, 6, 13 and 14 in Block 26, subject to a mortgage of \$100,000, due on or before five years at 5%. Lot 3 and the E. half of lot 4 in Block 26, the W. half of Lot 5 and Lots 13, 14, 3 and 4 in Block 27, subject to a mortgage of \$150,000, due on or before five years at 5%. Lots 3, 4, 5, 13 and 13 and 14 in Block 6, subject to a mortgage of \$150,000, due on or before five years at 5%. I agree to accept in payment of the foregoing: \$200,000 in cash, and the following described property to be clear: Sub-lots 1 to 5 incl. and Lots 6, 7, 8 and 11 in Block

27, and Sub-lots 1 to 5 incl. and Lot 10 in Block 6. Under this proposition, in the deeds going to you you assume the three mortgages aggregating \$400,000 and agree to pay the same, and this proposition is based upon my being successful in carrying out the verbal negotiations I now have on."

Fetzer testified that on April 24, 1907, he submitted to Thomas verbally the proposition contained in his, Fetzer's, letter to Thomas of April 25, 1907. On April 24, 1907, Thomas wrote a letter which he at first addressed to "F. A. Delano." Afterwards he struck out Delano's name and wrote at the top of the letter the word "Memor." The letter is as follows:

"Mr. Fetzer will see you tonight about a new proposition he has to make in three-ply deal covering the Hafer and Keller properties. Hafer has refused to take \$450,000 for his property and Mr. Fetzer now proposed for \$700,000 to convey to the Western Indiana Company all of Hafer's property and all of Keller's property excepting Lots 6, 7 and 8, which are to be conveyed to Hafer together with the following lots belonging to the Western Indiana Company, viz: Lots 9, 10 and 11 in Block 6 and Lots 1, 2, 3, 4, 5, 6, 7, 8, and 11, in Block 27; Lots 9, 10 and 11 fronting south on 23rd Place, Lots 6, 7 and 8, fronting north on 23rd Place, Lots 1, 2, 3, 4, and 5 fronting west on Canal street and Lot 11 fronting south on 24th street. This eliminates Keller and gives Hafer a solid piece of property 125 feet in width extending from 23rd street to 24th street and gives the Western Indiana a solid piece of property from 23rd street to 29th street excepting the church properties and the property conveyed to Hafer above described. There is a great advantage in having the solid property between 23rd street and 29th street which this deal would give us, but the difference in square feet between the property which Keller and Hafer convey to the Western Indiana Company and the property which

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1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States.

1. The above information was obtained from the files of the FBI, New York Office, and is being furnished to you for your information.

[illegible][illegible]

There is no other person in the family who is a member of the family.

we convey to Hafer in part payment represents over \$10.00 per square foot which is of course an extravagant price and would not be entitled to any consideration whatever ^{were} it not for the added value it gives to the rest of the property."

Fetzer testified that he saw Delano on the evening of April 24, 1907, and submitted the revised proposition to him. Delano testified that no such proposition was ever submitted to him and that if it had been, he would have rejected it. Fetzer admitted in his testimony that he did not tell Delano that \$80,000 was to be included in the proposition to be used by Thomas for "railroad purposes." Fetzer testified that he told Thomas that he had submitted the revised proposition to Delano and that Delano had approved of it; that Thomas requested him to write a letter for the file showing Delano's approval. The following letter, dated April 25, 1907, was written by Fetzer to Thomas "for the file:"

"Referring to the proposition herewith enclosed and of even date, would say that I took this matter up with Mr. Delano last evening and explained the same to him fully and in detail and stating that in my opinion it was a better deal than the former one. In this statement Mr. Delano at once concurred and stated he would call you on the 'phone and urge its acceptance. Mr. Delano, after asking one or two questions, so as to understand it, had no hesitancy in approving the deal, nor so I believe you will if you will give it detailed consideration."

Delano denied that he had any such conversation with Fetzer or that he had ever approved the proposal.

The Keller-Hafer purchase was finally closed by changing the terms of \$200,000 in cash and \$400,000 in mortgages, as specified in Fetzer's pretended proposal to Thomas of April 25, 1907, to \$275,000 in cash and \$325,000 in mortgages. The amount actually

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paid to the vendors, as we have previously stated, was \$465,000 and not \$600,000, thus leaving a deficit of \$135,000. Fetzer's testimony on the trial explaining this deficit of \$135,000 discloses conduct of himself and Thomas of such turpitude that in order fully to understand their conduct the testimony of Fetzer should be set out at some length. Before stating Fetzer's testimony on the trial in the case at bar in respect of the deficit of \$135,000, we should call attention to the fact that the testimony of Fetzer in regard to the item of \$65,000 which Fetzer claims was included in the \$135,000, varied from the explanation of the \$65,000 which Fetzer gave to the Grand Jury which investigated the transaction of the Keller-Hafer Coal Yards, and it also differed from the explanation of the \$65,000 which he gave on another occasion where he is referred to as having testified "before Judge Sullivan."

In a letter to W. H. Lake, foreman of the Grand Jury, Fetzer stated in respect of the item of \$65,000 as follows:

"Now, in order to pay Thomas and Henley cash they changed my offer of \$200,000, in cash, and \$400,000, mortgage, to \$275,000, cash, and \$325,000 mortgage, - it being understood Thomas was to receive \$65,000 in cash and Henley \$10,000 in check."

In testimony referred to as having been given "before Judge Sullivan," Fetzer testified in regard to the \$65,000 as follows: "When I made settlements from time to time with the railroad company I always sent a check unless they asked for currency. In this instance Thomas asked for currency. I didn't tell Field what I wanted that money for; I didn't know, and Thomas gave me no impression as to why he wanted that money. I told Judge Field that I charged Thomas with \$65,000 out of the Keller-Hafer deal, at Thomas' request. When I took the first Keller-Hafer proposition

down Thomas said he wanted \$65,000 for railroad purposes, and I left him my proposition to sell the property to them, until I was able to get together the \$65,000 of currency to give to Thomas which he wanted for railroad purposes. And I told Field he wanted that currency of \$65,000 for railroad purposes, and I have never known and did not tell Field what those purposes were."

On the trial in the case at bar Fetzer's testimony in respect of the item of \$65,000, as quoted from the abstract, was as follows: "Prior to the negotiations on the Keller-Hafer deal I had paid Thomas \$65,000. I think I had paid Hanley \$10,000 and \$5,000 at the time. ** As to my understanding that the \$30,000 was to repay me for what I had advanced them, I say in the early part of the negotiations, when he [Thomas] told me first he would have to have this amount of money for railroad purposes, I didn't realize that out of that he [Thomas] would pay me what I advanced. He was to fix it up with me shortly but not out of the Keller-Hafer."

It will be observed that in Fetzer's letter to the Grand Jury Fetzer stated that Thomas was to receive the \$65,000 and that he was to receive it in cash; that in Fetzer's testimony before Judge Sullivan, Fetzer stated that Thomas was charged with the \$65,000, but that he was not to receive it until he, Fetzer, was able to get the \$65,000 together; that in Fetzer's testimony on the trial in the case at bar, Fetzer was to receive the \$65,000.

It will be noted further that Fetzer testified in the trial of the case at bar that in his testimony "before Judge Sullivan" Thomas wanted \$65,000 when he, Fetzer, first took the Keller-Hafer proposition to Thomas; and that on the trial in the case at bar Fetzer also testified that in the early part of the negotiations Thomas was to pay him the \$65,000 but not out of the Keller-Hafer purchase.

Further testimony of Fetzer on the trial in the case at

bar in regard to the Keller-Hafer purchase, as quoted from the abstract was as follows:

"My recollection is that Thomas first took up with me the matter of the Keller and Hafer yards purchase about April 9th or 10th. Thomas said that if I could get the right kind of price from Keller and Hafer and could buy in bonds like I had bought the Serkery coal yard, that he thought he would entertain the proposition. I called on Hafer and started negotiations with him, and also with Keller. Hafer first made a proposition indicating he would consider a proposition. My recollection is about \$400,000. Might have been \$450,000. I told him I would see what I could do. He wanted me to consider a proposition to exchange properties. And then I went ahead with Keller. Next day Hafer, after this proposition of the letter of April 12th, said he would not sell out, and would insist on an exchange. Keller on April 12th made me a price of \$350,000. My letter of April 12th was on that basis. Later I was doing some work with John B. Brown and I asked him if he knew Keller, and he said he had had some negotiations with him on behalf of Thomas, or somebody. I said I was trying to buy Keller's yard, and he said, 'Keller made me a price of \$325,000 on it.' That was a \$25,000 better price than he had made me, but Brown's price was cash. I then went down and saw Keller, and notified him of this price of \$325,000 and said I did not think it fair that he would not give me as good a price as anybody, and that if he would make me a lower price I thought I could land the deal. Keller made me a price of \$325,000 for a limited time, not over three days, I think, and that he would have to have \$50,000 in cash, and would take \$275,000 in Western Indiana (the cross complainant) bonds. I took the matter up with Thomas and made a definite proposition based on Keller's and Hafer's revised propositions. April 12th I had conversations with Thomas, not with Delano. April 16th Thomas

said, when he came to accept, that they did not have any bonds, but he would have some released in June if I could float that with the \$200,000, and he wanted me to include in the proposition, when I made it, \$50,000 and \$10,000 that I had paid to Henley and him; and in the meantime I think I had paid him some more; but at any rate it took an additional \$15,000 to Thomas and \$5,000 to Henley, so there had to be \$80,000, which had been returned to Thomas direct or to Henley at Thomas' order, to be used for railroad purposes, which they wanted to go into real estate account, which had to be included in this proposition of April 25th. *** The \$15,000 in addition to the fifty originally given me, was paid to Thomas except such amounts as had been paid to him between the \$50,000 and this time. I did not pay \$15,000 at that time. It was turned over to him in currency each time, by myself, and I paid \$10,000 to Henley in March, and I gave him five more at this time in check for \$5,000. I didn't pay him in currency. *** On April 11th I think the Keller-Hafer transaction had not yet been inaugurated. My opinion is I didn't have any money remaining in my hands after the payment of my check of April 16th to Fleming, \$25,000. I think they owed me money. I had not my \$65,000 back, that I had advanced. The Corkery proposition at \$750,000 I thought was made about March 8th or 9th; March 9th possibly. It was about March 8th or 9th. When these Canal street deals outside, exclusive of Keller, Hafer and Corkery, were closed and I had paid out all the money advanced me, I would state in a general way that I think I was a creditor of the road for \$60,000. Before that time, on March 14th, I paid \$50,000 to Thomas. On February 4th I paid \$3,000. And six and six. Making \$65,000. No provision had been made for the \$3,000, the \$6,000, or the second \$6,000, for the repayment to me of these moneys, up to the time the deals were closed, and I had exhausted the moneys in my

hands, for the Canal street properties. Nothing was incorporated in the consideration of any of the Canal street properties to cover these amounts prior to the Keller and Hafer deal, and the \$50,000 had not been returned to me from any of the deals on Canal street. When I had substantially closed all the Canal street deals no provision had been made for the repayment of the \$65,000 that I had paid to Thomas, and such amounts as I had paid to Henley; and I guess there were other real estate deals in contemplation, but Thomas said he would fix that matter up and I kept after him for it. I absolutely rested simply upon his promise, to fix the matter up. I had no security of any kind, not even a lead pencil memorandum. Nothing that in the event that he died that could prove the facts. I had not asked Thomas to take care of the \$3,000 and the two \$6,000 items prior to March 14th, when I advanced the further \$50,000. The repayment of the \$65,000 was left unprovided for, because there was no place apparently that it could be fixed up; and Thomas after that wanted some more money. *** Prior to the negotiations on the Keller-Hafer deal I had paid Thomas \$65,000. I think I had paid Henley \$10,000 and \$5,000 at the time, but he got \$15,000 out of the Keller-Hafer transaction. What I meant in my letter to W. H. Lake, when I said that in order to pay Thomas and Henley cash, it being understood Thomas was to receive \$65,000 in cash and Henley \$10,000 in check, when as a matter of fact I had already paid them some time before, was that he was to pay it back to me, and he couldn't pay it back unless he received it from some other source, and so he received it. I will state in this connection when the negotiations were on, and first on, I didn't understand that the \$80,000 which he would have to have for railroad purposes was to reimburse me; that he was to reimburse me was

understood, but he was to have it for railroad purposes and I asked him if he could use bonds, and he said he thought it could be arranged. When I found out that he thought it could be arranged and that meant that I should take bonds, and I could not do that, I could not do it physically, and I told him I would have to have the cash which I paid him, and that was the reason for the change. In this connection, I mean with the Keller-Hafer deal. As to my understanding that the \$80,000 was to repay me for what I had already advanced them. I say in the early part of the negotiations, when he told me first that he would have to have this amount of money for railroad purposes I didn't realize that out of that he would pay me what I advanced. He was to fix it up with me shortly, but not out of the Keller-Hafer. In the early part of the negotiations, as I understood it: it had no connection with that deal. If I remember rightly, the day before the deal was closed I made a proposition on the theory that the bonds should come back, and I didn't know until the very time when the Western Indiana [the cross complainant] was going to accept it that the \$80,000 was in part at least to reimburse me, and I was expected to take bonds. I had the understanding that that \$80,000 was likewise to be used for some railroad purpose other than paying me back. *** Referring to my letter of 6 May, 1910, in which I say any money received in the Keller-Hafer transaction was paid to Thomas or Henley, it being understood Thomas was to receive \$65,000 in cash, Henley \$10,000 in check, and this included \$30,000 to me for financing, it is on the theory that it went to make a payment which they were to pay back. None of the physical money went to Thomas or Henley. I think I gave one check to Henley out of that money. The \$275,000 cash, I think the check was for \$5,000 or \$10,000. If you figure that \$65,000 in cash went to make a payment that Thomas was to pay, I gave it to him out of moneys received in

that transaction. I did not give him physically the \$65,000. I did retain the \$65,000 passed to me by voucher, and which was deposited to my account, included in the \$275,000 voucher. I thought I said I gave Henley a check for \$5,000. That was in addition to the check for \$10,000 in the first paragraph of my letter. My recollection is I did not give Henley that \$10,000 in check after I received the voucher for the Keller-Hafer transaction from the Western Indiana [the cross complainant.] What I referred to as having afterwards paid Henley was an additional \$5,000 which I gave to Henley on May 2, 1907.*** I think the moneys to be included above the actual amounts of moneys or bonds to be paid Keller and Hafer was discussed on April 24th. Thomas said he would have to have some \$80,000 for railroad purposes himself out of the Keller and Hafer proposition, and not for reimbursement to me for the \$80,000 I had already paid him and Henley. The \$80,000 mentioned in the conversation of April 24th developed on April 25th to be a part of the money which I had previously advanced him, but my recollection is very clear that it was not mentioned, as that money on April 24th. There was nothing said about 'additional' or anything of that kind. He simply said \$80,000 would have to come out of it.*** I didn't find out until the 25th that the \$80,000 was to be returned to me. ** So far as I understood on the 25th he was to get another \$80,000 out of this deal. No provision was then made for reimbursing me for the \$80,000 that I was already out.*** There was no other transaction than the Keller and Hafer pending at this time, and so far as I knew none other contemplated.*** They changed my proposition of April 25th from \$200,000 in cash and \$400,000 in mortgage, to \$275,000 cash and \$325,000 in mortgage. In my judgment all the changes were made between April 24th and 26th.*** There was a payment of a debt owed by Thomas or the railroad to me.** I did not at any time communicate to Belano these changes in the letter of April 25th. He was not in town then, the day when the changes were made. The lots conveyed to Hafer, which had been purchased from Keller, lots 6, 7, 8, and 11, in Block 6, were left out of the letter because they intended to give them to Hafer and not sell them to the railroad. As a matter of fact, they were part of the consideration that went to Hafer. I would say they were also a part of that for which I paid the consideration that went to Keller."

It will be observed from Fetzner's testimony, which we have quoted above, in regard to the deficit of \$135,000, that included in the \$135,000 there was \$80,000, which was composed of the following items: \$65,000 to be returned to Fetzner for moneys advanced by him to Thomas; \$10,000 to be paid to Thomas; and \$5,000 to be paid to Henley. Waiving the question as to what effect on the credibility of Fetzner's testimony, his contradictory statement in the letter to the foreman of the grand jury that Thomas was to receive the \$65,000, may have, and assuming that the \$65,000 was received by Fetzner for advances made by Fetzner to Thomas for "railroad purposes" prior to the Keller-Hafer purchase, the question arises whether the advances were made out of the funds of the cross complainant or out of the personal funds of Fetzner. If they were made out of the funds of the cross complainant, they should not have been returned to Fetzner. From Fetzner's testimony, presumably they were made out of Fetzner's personal funds, as he speaks of himself as the creditor of Thomas or the cross complainant. It is highly improbable, however, that Fetzner had advanced the \$65,000 to Thomas out of his personal funds prior to the Keller-Hafer purchase. A month before the Keller-Hafer purchase, all the transactions with the cross complainant had been closed, and the Keller-Hafer purchase was not contemplated. Fetzner says that for the \$65,000 he "had no security of any kind, not even a lead pencil memorandum." If Fetzner had made advances to Thomas aggregating \$65,000 prior to the Keller-Hafer purchase, and if all of the deals had been closed with the cross complainant before the Keller-Hafer purchase, and the Keller-Hafer purchase was not contemplated, it is not reasonably conceivable that Fetzner should have neglected to have the \$65,000 repaid to him out of the funds in the transactions prior to the Keller-Hafer purchase. But in any event, whether the alleged advances to

Thomas aggregating \$65,000 for "railroad purposes" were made out of the funds of the cross complainant or out of the personal funds of Fetzer, we are of the opinion that the \$65,000 lawfully could not be used for "railroad purposes," and that therefore in his accounting with the cross complainant Fetzer is not entitled to be credited with the \$65,000. We are also of the opinion that Fetzer's account should not be credited with the alleged payments to Thomas and Henley of \$10,000 and \$5,000 respectively.

Counsel for Fetzer contends that after the purchase of the Keller-Hafer Coal Yards, a full report of the transaction was made by Thomas to the board of directors of the cross complainant; and furthermore that one of the directors, Delano, was thoroughly conversant with and approved of the whole transaction before the purchase was made. It is true that after the purchase of the Keller-Hafer Coal Yards, Thomas did make a report to the board of directors, but the report was not full and complete. The report stated that the Keller-Hafer Coal Yards had been purchased for \$600,000; and that certain lots, describing them and giving their cost, had been conveyed to Hafer "in exchange;" but the report did not state in terms that the four lots purchased by the complainant from Keller were the lots that had been conveyed to Hafer "in exchange." The report did state the number of square feet purchased by the cross complainant from Keller and Hafer, respectively. If with this data the directors had computed the square feet of the lots conveyed to Hafer "in exchange," the directors might have ascertained that the four lots of Keller had been conveyed to Hafer "in exchange;" but as the lots conveyed "in exchange" to Hafer were specifically described in the report, the directors reasonably would not have been expected to make a computation in square feet. The report of Thomas did not show, and counsel for Fetzer does not contend that it showed, that in the \$600,000 reported by Fetzer

There were also \$50,000 for "miscellaneous purposes" and \$50,000

of the funds of the same company, as set out in the

books of account, as set out in the minutes of the 1900, and finally

could not be used for "miscellaneous purposes," and that the same

in his accounting with the above mentioned books is not entitled

to be credited with the \$50,000. It was also of the opinion that

Wells' account should not be credited with the \$50,000 payments

in 1900 and January of 1901, and \$5,000 respectively.

Conceding the facts contained in the report of the directors of

the California Bank, a full report of the transaction was

made by Thomas to the board of directors of the same company;

and furthermore, that one of the directors, James, was personally

concerned with and approved of the whole transaction before the

board was held. It is also stated that two payments of \$50,000

Wells' account and finally, Thomas also made a report to the board of

directors, but the report was not full and complete. The report

stated that the California Bank had been purchased for

\$50,000; and that certain facts, concerning them and other facts

had been conveyed to Wells in exchange; and the report also

set out in detail that the bank had been purchased by the company

from Wells and the facts that had been conveyed to Wells in ex-

change. The report also stated the number of shares that had been

by the above mentioned from Wells and Wells, respectively. It

also stated that the directors had approved of the whole fact of the

fact conveyed to Wells in exchange, the directors might have

concluded that the fact that Wells had been conveyed to Wells

"in exchange," but as the fact conveyed in exchange to Wells had

specifically mentioned in the report, the directors' responsibility would

not have been excused to make a suggestion in some form. The

report of Thomas did not state, and Thomas the facts that not

concerned that it should, and as the \$50,000 reported by Wells

as the cost of the Keller-Hafer Coal Yards, there was included \$135,000 which, according to Fetzer, was composed of \$15,000 in cash to Thomas and Henley; \$65,000 retained by Fetzer for cash previously given by him to Thomas and Henley; also \$25,000 retained by Fetzer for "financing" the purchase of the Keller-Hafer Coal Yards; and \$30,000 for Fetzer's commissions, out of which \$30,000 Fetzer gave Kappes \$11,000 in bonds.

The evidence as to whether, before the Keller-Hafer Coal Yards were purchased, Delano knew the terms of the purchase is conflicting. Fetzer testified that he explained the proposed transaction fully to Delano. On the other hand Delano positively denied the testimony of Fetzer. We have previously referred to the evidence in this respect. Without deciding the question whether Delano was fully informed of the proposition before the purchase was made, it is sufficient to state that Delano never knew, and it is not contended by counsel for Fetzer that Delano knew, that the \$600,000 reported by Fetzer as the cost of the Keller-Hafer Coal Yards included \$135,000 which was composed of the several items which we have indicated.

Counsel for Fetzer contends that all of the letters which we have set out above between Fetzer and Thomas and Henley, Kappes and Thomas, and Thomas and Delano, in regard to the Keller-Hafer purchase were written in good faith by Fetzer, Thomas, Henley, and Kappes. In our opinion the letters are part of a conspiracy between Fetzer, Thomas, Henley and Kappes to defraud the cross complainant.

Counsel for Fetzer argues further that Fetzer was not the agent of the cross complainant in the Keller-Hafer purchase, but was an independent vender. We do not think that the argument of counsel for Fetzer is tenable. As we have previously stated, according to the terms of the original contract between Fetzer and the cross complainant, Fetzer was the agent of the cross complainant in all of the purchases and Thomas had no power to

as the case of the California-Spanish War, which was declared
in 1810, when, according to the treaty, the Spanish crown
was to transfer the territory of California to the United States.
Previously stated by the Spanish crown, and which was
to be the result of the treaty of the California-Spanish War.
And, as the case of the California-Spanish War, which was
declared in 1810, when, according to the treaty, the Spanish crown
was to transfer the territory of California to the United States.

The evidence as to the fact, that the California-Spanish War
was declared, is that the Spanish crown, in 1810, declared
the California-Spanish War, and that the United States, in
1810, declared the California-Spanish War. On the other hand, the
evidence as to the fact, that the California-Spanish War was
declared in 1810, is that the Spanish crown, in 1810, declared
the California-Spanish War, and that the United States, in
1810, declared the California-Spanish War. It is therefore
evident, that the California-Spanish War was declared in 1810,
and that the United States, in 1810, declared the California-Spanish
War. It is therefore evident, that the California-Spanish War
was declared in 1810, and that the United States, in 1810,
declared the California-Spanish War. It is therefore evident,
that the California-Spanish War was declared in 1810, and that
the United States, in 1810, declared the California-Spanish War.

Further, the Spanish crown, in 1810, declared the California-Spanish
War, and that the United States, in 1810, declared the California-Spanish
War. It is therefore evident, that the California-Spanish War
was declared in 1810, and that the United States, in 1810,
declared the California-Spanish War. It is therefore evident,
that the California-Spanish War was declared in 1810, and that
the United States, in 1810, declared the California-Spanish War.
The case of the California-Spanish War, in 1810, is a case
of a treaty, which was declared in 1810, and which was
declared in 1810. It is therefore evident, that the California-Spanish
War was declared in 1810, and that the United States, in 1810,
declared the California-Spanish War. It is therefore evident,
that the California-Spanish War was declared in 1810, and that
the United States, in 1810, declared the California-Spanish War.

change that contract. We are of the opinion that if Thomas did agree with Fetzer that it should be changed in the Keller-Hafer purchase so that Fetzer became an independent vendor, Thomas acted without authority and the board of directors did not know of nor acquiesce in such change. Furthermore there is specific evidence in regard to the Keller-Hafer purchase which negatives the idea that Fetzer was an independent vendor. The moneys he disbursed were furnished to him by the cross complainant; he made a report to the cross complainant of the disbursements; and he rendered a bill to the cross complainant, which the cross complainant paid, for a guaranty policy in the amount of \$600,000 to cover the property, purchased by the cross complainant in the Keller-Hafer purchase.

Counsel for Fetzer further contends that the trial court erred in not allowing Fetzer to credit his account with the item of \$25,000 which Fetzer claimed was due to him for "financing" the Keller-Hafer purchase. The action of the court in this respect is assigned as a cross error by Fetzer.

In view of the fact that in our opinion, Fetzer was the agent of the cross complainant and was guilty of fraud in the Keller-Hafer purchase, it follows that Fetzer should not be allowed the credit of \$25,000. Moreover, the evidence does not show that the cross complainant knew that Fetzer was charging \$25,000 for "financing" the purchase. Fetzer does not contend that the charge was made with the express knowledge or consent of the cross complainant; and the report of Fetzer to the cross complainant did not show the amount of \$25,000 as a separate item. That amount, according to Fetzer, was included in the total amount reported. Again, the evidence does not show that it was necessary for Fetzer to finance the purchase.

From the views that we have expressed in respect of the

Keller-Hafer purchase it follows that Fetzner should pay to the cross complainant the sum of \$135,000, which is the amount of the deficit in the Keller-Hafer purchase.

In the purchase of what are designated as the Hegewisch purchases, there are three groups of purchases in which Fetzner's accounting to the cross complainant is in dispute; they are the Gilchrist purchase, the Lewins-Graves-McCauley purchase, and the Peters purchase. All of these properties are situated in Hegewisch.

The Gilchrist purchase, although reported by Fetzner as a single purchase, embraced six different transactions. Fetzner reported the purchase of these properties as having been bought from Robert Gilchrist, a dummy, for \$65,000. Of this amount \$45,000 was cash and \$20,000 was in mortgages assumed by the cross complainant. It is doubtful whether the mortgages were made in good faith. Counsel for the cross complainant contends that they were placed on the properties without regard to contiguity or value; that they were simply made to afford a basis for false reports and that they do not represent any part of the true considerations paid for the properties. The evidence shows that the real vendors received only \$30,382. The deficit amounts to \$34,618. Fetzner admitted in his testimony that the \$65,000 he reported as having been paid to the vendors was a false amount. In accounting for part of the deficit Fetzner testified that he gave Thomas \$17,200 to be used by Thomas for "railroad purposes" and included the \$17,200 in the \$65,000 which he reported as the amount paid the vendors. Fetzner testified that Thomas at first asked him for \$15,000, but that when he, Fetzner, "came to turn the currency over to him," Thomas said "the expense had been more then he figured on and he wanted \$17,200 in currency." Fetzner also claimed that he was entitled to \$4,475 as his profit in the transaction. Fetzner's testimony was as follows:

"Thomas when I came to turn the currency over to him said

the expense had been more than he had figured on, and he wanted \$17,200 in currency. I paid him \$15,000 in currency in the first instance, and I told him the deal did not involve that, and he said he had to have it, and to take care of it in some other way. I did not have it then, and had no deal on at that time, and afterwards I paid him \$2,200 more. That went to Thomas. * * * In my accounting this \$17,200 was paid to him out of what I call the first deal. That was my agreement with him, to pay it."

It is the contention of Petzer that he acted as an independent vender in this transaction; and that in making the purchases he was associated with a man named Lawrence Cox, president of a small national bank at Hegewisch. Cox's testimony indicates that he considered himself an independent vender, and not an agent of Petzer. Cox testified as follows:

"I first saw Mr. Petzer sometime in October. Mr. Petzer came into the office and wanted to know if I had control of this strip of land along the Western Indiana. I said that Mrs. Cox owned approximately 1,500 feet facing the Western Indiana and adjoining it. He said he wanted to get a strip of land along there for a railroad, and he said the Western Indiana [the cross complainant] already had a right of way and he was not in a position to condemn this land and had to pick it up as fast as he could, in order not to be held up on it. He said, 'If you will go out and pick up this land as reasonably as you can. I will come in here and close it, because I am not in a position to close it - to go around from place to place.' And at that time I think we discussed the fact that it was hard to get currency, and a stranger coming in there would have a little difficulty in convincing these people, unless he carried the currency right in his pocket. I think that was * * the reason why he wanted to do business with us, and get

the question of the... I said the... first... and I said the... I did not... I said the... I said the... of what I said the... in my opinion...

It is the... independent... however he... growth of a... together that... in mind of...

"I think... some into... ship of... named as... joining... for a... [although... in... could not... took up... and about... regard... the fact that... there were... which he... was a...

it cleaned up in a hurry."

Cox also testified that he did not "go out" for Mr. Fetzer because he "did not leave us any money to do any business;" that Fetzer said that "if he would pick up that stuff, he would take it off our hands;" that "we went out and picked it up and took the chance."

Cox testified further that "Fetzer was not present at the closing of the deals," and did not take receipts from the vendors; that Fetzer was not present when the vendors got their money, that they did not see him at all; that he, Cox, would not say that they did not see Fetzer in any instance.

William Sippel, cashier of the bank of which Cox was president, testified that "we went out and brought the owners in the bank;" that "the property was purchased there; that Fetzer made the purchases."

In accounting for checks paid to him by Fetzer, amounting to \$13,300, Cox testified that \$3050 was paid for four lots which stood in the name of Cox's wife. It is contended by counsel for the cross complainant that the evidence does not show that such lots were bought.

Again Cox testified that Fetzer paid him \$1700 for one lot which stood in the name of Mrs. Cox. Counsel for the cross complainant maintain that no such transaction took place; that the only purchase from Mrs. Cox was a 34 foot strip for which Cox testified that he was paid \$7800 by Fetzer's check dated December 3, 1907. The conveyance of the 34 foot strip was dated and recorded November 6, 1907, that is seventeen days before the strip was paid for. There is in evidence a receipt of Cox for \$19,500 dated December 3, 1907. [the same date as Fetzer's check to Cox. The receipt recites that \$11,700 had been previously paid for certain property described in the receipt; and that the balance, namely,

[illegible]

...the

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Figure 1. The effect of the concentration of the inhibitor on the rate of polymerization of the monomer.

On 10/11/2013, 10:10 AM, "John" <john@johns.com> wrote:

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

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Figure 1. The first two principal components (PC1 and PC2) of the 12 variables used in the analysis. The variables are: (1) Age, (2) Sex, (3) Education, (4) Income, (5) Health, (6) Employment, (7) Social network, (8) Life satisfaction, (9) Self-efficacy, (10) Optimism, (11) Resilience, and (12) Coping strategies.

Source: *Journal of the American Statistical Association*, 1997, 92, 103-114.

• *Journal of the American Medical Association* 2000;283:1001-1005

and will strive to work with the community, the business and the government.

2. The second part of the paper discusses the impact of the 1997 Asian financial crisis on the Asian economies. The paper shows that the crisis has led to a sharp decline in the Asian economies' GDP, a sharp increase in unemployment, and a sharp decline in the Asian economies' foreign reserves. The paper also shows that the crisis has led to a sharp decline in the Asian economies' stock prices and a sharp increase in the Asian economies' government debt. The paper concludes that the Asian financial crisis has had a significant impact on the Asian economies and that the Asian economies need to take steps to address the crisis.

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There are two types of *in situ* and *ex situ* conservation strategies.

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1. The first part of the document is a letter from the author to the reader, explaining the purpose of the study and the methods used. The letter is dated 1998 and is addressed to the reader.

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1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

[Faint, illegible handwritten notes]

* * *

- 7 -

\$7800, had been paid for certain other property described in the receipt. Fetzer was unable to explain the coincidence that the identical amount of \$7800 was, according to Cox's testimony, paid to Cox for the 34 foot strip by Fetzer's check dated December 3, 1907, the same date as Cox's receipt. Since the evidence shows that the 34 foot strip was not worth \$7800, the fair inference is that the \$7800 was paid for the other property described in Cox's receipt.

In respect of his association with Cox, the testimony of Fetzer is as follows:

"I went to see Cox to see what he wanted for this property. I never had seen him before. He made me a price on the 34 foot strip. I don't remember what it was. I think I paid him \$200 on the bargain. Kappes was waiting outside and I told him I had bought it, and he said Thomas had not authorized you or anything. I said, 'I think he will, and I did not want to let this get away from us.' So I went back and told Thomas I was prepared to make him a proposition; and he said he had to have \$15,000, that the railroad had been to some expenses in the matter, and he wanted to charge to Real Estate Transaction in this deal, and for me to include that in the proposition. I made Thomas a proposition of \$65,000 and wrote him a letter, Exhibit 366. I told Thomas that if he would give me \$35,000 in cash, which included \$15,000 to be returned to him, and a check for \$35,000 and \$10,000 in bonds, and assumed mortgages of \$20,000, that I would deliver this property to him free of any liens except the \$20,000 in mortgages. And he accepted the proposition, and gave me voucher for \$20,000, the \$35,000 in cash, and \$10,000 in bonds, which has been introduced in evidence. I then undertook the purchase of the property, after I got his voucher. I went down there, and it was a time when they were issuing Clearing House certificates, and the people down there demanded currency."

Fetzer also testified as follows: "Most of the purchases

were completed through Cox. I got the prices from him. I had to take currency; it had to be done quick, because I only had verbal prices. * * Cox was to buy the property and give me a price."

In his letter to Thomas, referred to in Fetzer's testimony as Exhibit 366, Fetzer purported to be an independent vender. The letter, which was dated November 9, 1907, began as follows: "Agreeable to your request in relation to a definite proposition as to some property in Hegewisch would say I am prepared to deliver to you * * ."

Thomas enclosed this letter of Fetzer in the following letter which Thomas wrote to Kappes on November 16, 1907:

"I hand you herewith a communication from Mr. John C. Fetzer in relation to the property recently purchased between Hegewisch and a point 6,000 feet north of Hegewisch. My understanding is that receipts will be furnished showing the prices paid the owners of the property. You will recall the question that was raised by the Auditing Committee on a former occasion about receipts from original parties. Do you see any objection to Mr. Fetzer's arrangements for buying this property?"

It will be observed that Thomas states that "receipts will be furnished showing the prices paid the owner of the property" although Fetzer is pretending to be an independent vender.

Kappes replied to Thomas' letter as follows:

"Referring to your favor of the 16th inst., with attached letter from Mr. John C. Fetzer of Nov. 8th, being a proposition from him to deliver certain property therein mentioned and an estimate of the probable cost of certain other property, would say that I see no objection to such an arrangement with Mr. Fetzer. In view of the fact that Western Indiana [the areas complainant] Bonds must be used as part payment it would seem to be altogether the best arrangement. Mr. Fetzer understands about taking receipts in compliance with the Auditors' Requirements and I understand

and completed through me. I got the money from him. I had
to him money; it was to be some time, because I was not
total money. I got two to pay for the money and the other
in his hand to him, because of the money's property
as a whole, but I was not to be an independent person. I was
not, which was a great mistake, I was, which was a great
able to pay money in relation to a certain property as to some
money's in America which was I am prepared to deliver to you.

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he will do this wherever it is possible. A few days ago I went on to the ground and made a very careful inspection of Blocks 8 and 22 and would say that if Mr. Fetzner can deliver these two blocks at the figure named by him or even at slightly higher figures, I would recommend that arrangements be made with him to secure these blocks. I do not believe they can^{ever} be acquired for less than they can now and will most likely cost considerable more later on."

On the bottom of this letter of Kappes there is the following notation in ink: "Confer in regard to the amount paid for the two blocks marked 'x' B. T. 12/4."

It will be noted that in his letter Kappes says, "Mr. Fetzner understands about taking receipts in compliance with the auditor's requirements and I understand he will do this wherever it is possible."

If Fetzner was an independent vendor why should he take receipts from the vendors in compliance with the requirements of the auditor of the cross complainant? Moreover if Fetzner was an independent vendor there was no reason why the auditor should not have been so informed, and the receipts would have been unnecessary.

In the transaction in question, namely, the Gilchrist purchase, we are of the opinion that Fetzner was the agent of the cross complainant and not an independent vendor.

We do not think that Thomas had any authority to permit Fetzner to abandon his status as agent under his original contract with the cross complainant, and to assume to act toward the cross complainant as an independent vendor. And we do not think that the cross complainant knew that Fetzner was pretending to act as an independent vendor. The fact is that the evidence shows a concerted effort on the part of Fetzner, Thomas and Kappes to induce the auditor of the cross complainant to believe that Fetzner was acting as an agent and was producing the receipts

of the real vendors.

Furthermore there are specific facts in the transaction which show that Fetzner was an agent of the cross complainant. He was furnished the money by cross complainant with which to make the purchases; he made reports to the cross complainant of the disbursements of the money; he sent the bill to the cross complainant for the guaranty policy of the title of the property.

In our view, however, the question in this transaction, as well as in the other Hegewisch purchases in controversy, is not whether Thomas had authority to deal with Fetzner as an independent vendor, but whether there was a conspiracy between Thomas and Fetzner to defraud the cross complainant. We think that there was such a conspiracy; and that in pretending to recognize Fetzner as an independent vendor, Thomas was merely carrying out his part of the conspiracy. We are also of the opinion that Kappas was a co-conspirator; and we are further of the opinion that Cox was not an independent vendor. We think that Cox was used by Fetzner as a convenient agency to assist Fetzner in perpetrating his fraud against the cross complainant, and that Cox did not act with entire innocence in the matter.

From the views that we have expressed it follows that in the transaction in question, namely, the Gilchrist purchase, Fetzner should pay to the cross complainant the sum of \$34,618.

In the Lewin-Graves-McCauley purchase the evidence shows a deficit of \$15,240 between the amount reported by Fetzner as the cost of the property and the amount received by the vendors. The property was reported by Fetzner as having been purchased in a single purchase from Lewins, Graves and McCauley, dumries, although there were sixteen separate vendors. The properties

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were situated in Hegewisch. Fetzer reported these properties as having cost in the aggregate \$43,500, of which \$20,000 was in cash and \$23,000 in mortgages, assumed by the cross complainant. The same remarks that we made about the mortgages in the Gilchrist purchase apply also to the present purchase.

In direct conflict with Cox's contention that he was an independent vendor, there is testimony of some of the real vendors of the properties that Fetzer actively participated in the negotiations for the purchase of their properties.

Frank Bock, one of the real vendors in the Lewins-Graves-McCauley purchase, testified that he dealt with Fetzer. Bock's testimony was as follows:

"I sold that property to Mr. Fletcher. I have an idea that gentleman there (pointing to Fetzer.) His name might be Fetzer. I don't know when it was I sold it. Mr. Sippel, the banker, told me that if I wanted to sell my lots there was a buyer at the Hegewisch Bank. I went down there and Mr. Fletcher and another gentleman asked me, they were at the table there and they asked me for my price. I gave my price and they closed the deal. I got \$1,200."

Pauline Cherry, another of the real vendors in the Lewins-Graves-McCauley purchase, testified that Fetzer was present when the sale of her property was closed.

The Lewins-Graves-McCauley purchase, according to the testimony of Fetzer, was made in the following circumstances:

"Shortly after the proposition of November 8th Thomas sent for me and said he thought the Kensington & Eastern were coming down, and he thought they had ought to have as good a representation in Blocks 8 and 22 [the blocks in which the property in the Lewins, Graves and McCauley purchase was situated] as he could get, without too much investment of money, to buy as

very situated in Cambridge. Below certain level of the
ground level in the Cambridge City, at which level the
ground was 100 feet in height, and the ground was 100 feet
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ground was 100 feet in height, and the ground was 100 feet

to have been used as a means of communication between the two groups.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very long letter, and it contains a great deal of information about the state of the country at that time. It is a very important document, and it is one of the most interesting documents in the collection.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a copy of the original letter, and is signed by the President.

I am not sure if I have told you that I have been thinking of you very much lately. I hope you are well and happy. I am well and hope to hear from you soon. I am not sure if I have told you that I have been thinking of you very much lately. I hope you are well and happy. I am well and hope to hear from you soon.

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

There is also something wrong with the way the word "and" is used in the sentence. It should be "and" instead of "and" as in the original text.

many lots as were not ever-well improved, so that he could block them in buying up these two blocks, and then go around Block 5 [the block in which the property in the Gilchrist purchase was situated] and he would like to have it done right away, and would like to have me make him a proposition of what I could do that for; and I told him that in my first proposition of November 2th it did not include taking care of Kappes, and I had an arrangement to take care of him in this matter, and he said, 'Include it in this second proposition;' and I then made a visit to Hegewisch and seen Cox, and at that time I went over the matter in detail with him as to what he was sure he could do, and I made Thomas a proposition, which is the amount of \$43,500 on which a letter has been introduced, Exhibit 357. I looked over the property contemplated to be purchased at the time I went down to see Cox. I don't remember that I made him the proposition that I would deliver him the property for \$43,500 before the letter of November 15, 1907, was written. The entire cash part to be used in the proposition was not furnished by me upon acceptance. The entire amount of money involved in the proposition that I made him was paid to me in cash. I paid Kappes ten bonds, and in my estimate of that transaction it included the bonds. I didn't pay him at once; I had some financing to do; I paid him when I got it. When I said out of the \$43,500 I paid Kappes \$10,000 in bonds, I did not mean physically out of it. I meant as a bookkeeping proposition."

It will be observed from the testimony of Fetzer that Fetzer and Thomas arranged "to take care of Kappes." Yet, according to Fetzer's testimony, Kappes knew nothing of property in Hegewisch. Fetzer's testimony in this respect was as follows: "So I got hold of Kappes and asked him if he had any information there [in Hegewisch] and he said he did not have any information, so I went down

and I think he went with me, to make some inquiries." Fetzner further testified that Kappes "did considerable to assist him at Hegewisch."

In the transaction in question, namely, the Lewins-Graves, McCauley purchase, for the same reasons that we have stated in regard to the Gilchrist purchase, we are of the opinion that Fetzner was not an independent vendor, but was the agent of the cross complainant; that Cox was not an independent vendor, but was merely used by Fetzner to assist him in defrauding the cross complainant; that there was a conspiracy between Fetzner, Thomas and Kappes to defraud the cross complainant.

It follows from these views that Fetzner should pay to the complainant the sum of \$15,240, which is the amount of the deficit in this transaction.

The Peters purchase consisted of six separate properties. Fetzner reported the properties as having been purchased in a single purchase from Peters, his partner. The price of the properties, as reported by Fetzner, was \$54,400. The evidence shows that the real vendors received only \$36,927. Fetzner was assisted in making these purchases by Cox in the same way as in the Gilchrist and Lewins-Graves-McCauley purchases. Although Cox contends that he was an independent vendor in all of the Hegewisch purchases that he made in connection with Fetzner, the evidence shows in the transaction in question, namely, the Peters purchase, that in one of the properties included in that purchase two of the real vendors, John H. Lemmering and Daniel Jordan, negotiated directly with Fetzner in regard to the purchases from them. In respect of the purchase from Lemmering and Jordan, Cox testified that Lemmering and Jordan had "three separate pieces of property" that he, Cox, "took over;" that he turned over the first one to Fetzner for \$5,000; that he turned

over the other two to Petzer for \$1300; that he did not pay Lammering and Jordan "their purchase price before" he, Cox, "received money from Mr. Petzer." The testimony of Jordan in regard to the transaction was as follows:

"As near as I can remember the conveyance was in November, 1907. At the meeting at the bank there were present Cox, Sippel, Lammering, Petzer and myself. Petzer offered us \$25,000 for the coal yard and guaranteed the track in the new land that I had purchased from Cox providing we could get a track in there; that is the next land to Cox's land. We put \$2200 up in escrow in the bank; when the track was in there I was supposed to pay Cox \$2200. It was west of Cox's land. *** The name Daniel Jordan on the paper you show me marked November 26, 1907, [the purported receipt of Lammering and Jordan for \$35,000] is my handwriting, the rest is in typewriting. I don't know, I don't think the paper was in that form at the time I executed it. I was not drunk, and I don't know if I signed my name, I certainly would not have signed it for \$35,000 if I received \$25,000. The amount I received was \$25,000 - \$20,000 in bonds and \$5,000 in cash. I didn't receive \$35,000 I am sure."

Petzer's testimony in respect of the Lammering and Jordan transaction was as follows:

"As to being present when the deal with Lammering and Jordan was closed, I didn't close it, and I might have been in the bank building and I might have been in the room when it was closed. I don't remember that I was there, but at the same time I might have been. Cox made the deal. It was later than the second deal with Lammering and Jordan. As a part of the consideration there was paid to Lammering and Jordan \$20,000 in bonds. It was paid by Cox, and I brought the bonds down and gave them to Cox and I think it

was paid in his bank. I do not think it was paid in my presence. It is not my impression that I personally delivered those bonds; I might have done it, but I don't think I did. I didn't take from Lammering and Jordan their receipt for \$35,000 at that time. I didn't take that receipt after the closing of the second deal with Lammering and Jordan until Thomas stated he wanted receipts to cover the monies that had been paid to him and Judah Henley. I think it was."

Fetzer testified further that at different times he gave Cox the following amounts of money: \$11,100, \$10,500, \$10,000; and also gave Cox ten bonds of the cross complainant. Shortly after Cox became associated with Fetzer the account of Cox in his bank began to show large deposits. As to one deposit of \$11,300, Sippel, cashier of Cox's bank, expressly testified that it was a check signed by Fetzer, and presumably related to a transaction for acquiring land for the cross complainant or the Illinois Central Railroad Company.

From the testimony which we stated above in regard to the Lammering-Jordan purchase, it is apparent that the fact that part of the payment was made with bonds of the cross complainant is incompatible with the contention of Cox that he was an independent vendor. Also if Fetzer's testimony is accepted as true that he gave Cox money and bonds, such fact cannot be reconciled with the theory that Cox was making the purchases himself.

Another real vendor in the Peters purchase, John H. Brooks, testified that when the deal was closed for his property Fetzer was present. Brooks's testimony was as follows:

"Party came to the house one evening and wanted us to go to the Hegewisch International Bank, or whatever it is. My wife and I went over to the bank and they gave me \$100 that night. Mr.

Cox was there and said that they would give us \$3,500 for the property on Howard avenue, and told me to come the next morning between nine and ten o'clock and I could get the other \$2,400. I went and met a man, his name was Fetzer or Fletcher, something like that. It was the only time I ever saw the man. I don't know that I would remember him. He was a well built man, not of small stature. They told me the 2,400 was ready. There was a \$400 mortgage which was deducted from my \$3,500. The interest on the \$400 and the \$400 was taken out of my \$2,400 and we got the balance. I had gotten \$100 the night before. \$1900 was left in the bank and the balance of the money the cashier gave us through the bank, something less than \$100. The paper you show me [receipt for the \$4,500] has a signature similar to my signature, but I did not sign for \$4,500, and furthermore the documents that I signed, my wife signed, unless they did some slippery hand work and shoved in another paper in the place of it, after I handed her the pen. I did not receive \$4,500 and would not sign for \$4,500. That was what I expected - I asked \$3,500 and they jowed me down to \$2,500; and I knew there was some underhand work at it, and that is just the reason I would not sign until I read it."

Fetzer admitted in his testimony that the body of the receipt was in his own handwriting. Fetzer testified that he did not know where the receipt was prepared; that it was probably prepared in Cox's room in Cox's bank.

In attempting to account for the deficit in the transaction under discussion, namely, the Peters' purchase, Fetzer testified that he added \$14,800 at Thomas' request, to the amount paid to the real vendors; that Thomas wanted the \$14,800 for "railroad purposes;" and that Thomas said that the Kensington and Eastern Illinois Railroad Company eventually would be compelled to buy

an interest in the land, and that he wanted to make the Kensington and Eastern Illinois Railroad Company pay the amount that was added.

Apparently the Illinois Central Railroad Company, operating through the Kensington and Eastern Illinois Railroad Company, was endeavoring to extend its line in a way that Thomas, according to Fetzer, considered antagonistic or detrimental to the interests of the cross complainant.

Fetzer's testimony in regard to the matter of the Kensington and Eastern Illinois Railroad Company relates back to the beginning of the Hegewisch purchases. His testimony, as quoted from the abstract, was as follows:

"There was no further real estate deal with the Western Indiana until November of that year, I think. Thomas sent for me to come right down, said that he had some difficulty with the Illinois Central, who were building from Kensington to Hammond, that the Illinois Central had been endeavoring to come along south and west of the Mickel Plate, which parallels the Western Indiana, and crosses the Mickel Plate and Western Indiana at about the boundary of the towns of Hegewisch and Burnham, at which place they would also cross the Pennsylvania; that it would make a bad crossing, through the interlocker, that they have been endeavoring to have it cross otherwise, north and west of Hegewisch on an elevation over the Mickel Plate and Western Indiana. He said, 'Now here is a map, we have only got a 66 foot right of way and the lots in Hegewisch are 125 feet deep on this block parallel to our line with a 16 foot alley, making 141 feet, and we ought to have 100 feet right of way, and the Illinois Central will probably want 100 anyway, and I want you to make a proposition right away; I ain't got any money, we

haven't any bonds; we haven't got anything; I want a proposition just on the best terms you can get me, upon a sufficient holding down there, that will drive them into our camp, so that we can make a settlement.' He says, 'They are sore as a boiled owl now, because we have done this, and accomplished this, and there is no use talking with them.' I went down and saw the proposition, and suggested to him that if he took this 34 foot strip west of the lots, and bought the lots in the first block, Block 5, that if he did not make a deal with the Illinois Central, and if they backed out of the proposition, he said, 'I would not be surprised if they would back out of the proposition if they can; this 34 foot strip, along your vacant ground, will only give you the strip you want for the future, and the lots will be a good team track for you.' He said, 'Well, make your proposition.'*** Thomas insisted we should get prices on the balance of the property. He wanted me to make a proposition, so the railroad could get \$10,000 more for him and \$5,000 for some matters Judge Henley had on, in addition to the \$17,200 which I had paid [in the Gilchrist purchase]. He wanted a third definite proposition, and I said I didn't care to make any more definite propositions. He told me to let him have \$10,000 more, and Judge Henley \$5,000. I told him I had paid him \$17,200 [in the Gilchrist purchase] and I wanted to take the \$2,200 out of the ten. He told me he could not do that, and he did take \$9,200, so I paid him \$17,200 out of the other deal [the Gilchrist purchase] and \$9,800 out of this [the Peters purchase] to go back to him for railroad purposes; and I paid Henley \$5,000 in Western Indiana [the cross complainant] bonds. I had a talk with Henley. He said this should be cash, but I said, 'Can't you use bonds in this matter?' He said he would see, and after a couple of days he

said he would take bonds, and they were turned over to him. I didn't make any proposition. Thomas wanted the matter made in the form of a proposition, which I declined to do, and I put the lots in at exactly what I paid for them, plus \$14,890, and did not report them, Thomas seeing that I got credit. Total credit for \$54,400 reported as the Peters transaction. I did not report it to the road [the cross complainant] that I had paid that sum; it was not a direct sale. After Thomas had seen that I got credit for it, he said he wanted to make the Kensington & Eastern pay for this, and wanted to know if I couldn't get vouchers at a higher price than I had paid. He said he could use those vouchers with the Kensington & Eastern in checking up their account and in settling with them; that he intended to make them pay for all of the expenses that the Western Indiana had been to in this matter, at least their proportion of them; that he wanted a direct proposition even after I had closed the deal. I told him I couldn't do that, that it was not a direct proposition; that I was willing to do the work for nothing, which I did; there was not a cent of profit in it. He asked me to get receipts in each instance for as much larger as I could to eat up the \$14,890 paid to him and Henley, so that he could use receipts in settlement with Kensington & Eastern. I did get the receipts myself in connection with Cox. I did not send them to the Western Indiana [the cross complainant]. I handed them to Thomas, except the receipt of Lammering and Jordan. I sent that in a letter, and stated in the letter that it was gotten as he suggested. *** The talk with Thomas in which he wanted to know if I could not get vouchers from these as also, at a higher price, I would say was after the deals were closed, if by 'closed' is meant after I had made arrangements to purchase the property.*** He wanted to know if we could not make them a direct proposition

and I told him no, because the deal had been made and payments made, and it wouldn't be a direct proposition, and he says, well, he wanted me to make one any way, and I said I would not be a party to it, and so I didn't have any profits or anything else in it. I just turned the deals over as I got them and did what he told me to, and he made his own settlement with the Kensington & Eastern, and he didn't want the Kensington & Eastern or their man, Skeen, to know that he had used bonds so that the Illinois Central in paying their portion of the cost would refund to them all of the cash that the Western Indiana [the cross complainant] had been out and they would be out no cash. *** There was no arrangement between Thomas and me that I was to get receipts which did not represent the actual payments; there was an instruction of Thomas, and my understanding with Thomas was that the receipts were to include the actual payments which I made on account of these purchases, and also what I had paid to him and Henley. *** At Thomas' request the receipts were written to include the \$14,800 that has been returned. *** The \$14,800 was not given the purchasers - the former holders of the property. ** I got these receipts at his request, so that he and his men could use them in their settlement with the Kensington & Eastern. It would be my deduction, so it could be made to appear that they had paid these amounts for the property in their settlement with the Kensington & Eastern. I was not present when they were used. *** When I started to make these purchases I understood it was a bona fide purchase for the Western Indiana [the cross complainant]. And for the Western Indiana [the cross complainant] I was going to charge a commission; but before I got into the deal I found it was not, and was going to be a deal in which money was going to Thomas and to Henley, and that I would have to make the accounting, and I did not want to do it. I had already purchased the property and made my proposition as to prices to Thomas, before there was any

suggestion of including \$14,800 in it."

In this transaction, namely, the Peters purchase, we are of the opinion that Fetzer was the agent of the cross complainant; and that Cox was not an independent vendor. The reasons for our opinion are similar to those which we have previously expressed in regard to the Gilchrist and the Lewins-Graves-McCauley purchases. We are also on the opinion, for the reasons which we have previously indicated, and which we will enlarge upon later, that Fetzer is not entitled to be credited with the funds that he alleges that he gave to Thomas for "railroad purposes." We are further of the opinion that Fetzer and Thomas were guilty of perpetrating a fraud on the Kensington and Eastern Railroad company.

It follows from the views we have expressed that Fetzer should pay to the cross complainant the sum of \$17,473, the amount of the deficit in the transaction in question, namely, the Peters purchase.

In discussing the matter of the Kensington and Eastern Railroad Company, counsel for Fetzer maintains that "every presumption from the evidence is that the" cross complainant "received and has retained from the Kensington & Eastern Railroad its full contribution to the inflated values;" and that the "instigator and beneficiary cannot force Mr. Fetzer, who received no share of the profit and was not the author of the scheme, to again pay it the money which it has already enjoyed."

Counsel for Fetzer has not pointed out the evidence from which it may be presumed that the cross complainant received and retained the benefit of the inflated values. Furthermore, even if the evidence showed that the cross complainant received such benefit, there is no evidence that the cross complainant received

the benefit with full knowledge of the facts; and assuming that the evidence showed that the cross complainant has retained such benefit, there is no evidence that the cross complainant retained the benefit with full knowledge of the facts. The "instigator" of the fraud, according to Fetzner's testimony, was Thomas, not the cross complainant; and there is no evidence whatever from which it may be inferred that the conduct of Thomas was authorized by the cross complainant.

In the purchase of property known as the Trotter purchase there were six lots, which were purchased separately. These purchases were reported by Fetzner as one purchase from Benjamin R. Trotter in the total amount of \$50,000. Trotter was a dummy. He received two checks from Fetzner aggregating \$50,000, and deposited one of the checks to the account of Robert Fleming, another dummy, and the other to the account of Peters, the partner of Fetzner. The evidence shows that only \$39,350 was paid to the real vendors of the lots. All of the purchases were closed through the Chicago Title and Trust Company of Chicago, and the encrows showed that the total amount paid to the vendors was \$39,350. Fetzner attempted to account for the deficit of \$10,650 by testifying that he actually purchased the lots from a man named George H. Murphy for \$46,300, instead of \$50,000, as he had reported. Fetzner introduced in evidence an assignment of the properties by Murphy to Trotter for a consideration of \$46,300, which included \$8100 to be paid to Murphy, and a receipt from Murphy to Trotter for \$46,300. Fetzner testified that "after consultation with Thomas the price given to Thomas was \$50,000, so as to offer a commission to myself and to Kapper." The commission, therefore, was \$3700, the difference between \$50,000 and \$46,400.

The alleged ownership of Murphy was not disclosed until Fetzner's report had been shown to be false; and Murphy's

the family with full knowledge of the facts; and according to the
evidence given that the same individuals are retained in
custody, there is no evidence that the same individuals retained
the family with full knowledge of the facts. The "family" of
the family, according to the family, was the same, and the
same individuals; and there is no evidence that the same
may be inferred that the family was retained in the
same circumstances.

[illegible][illegible]

The following information is being furnished to you for your information:

receipt was dated two days after Petzer's report of the purchase. In order to conceal the \$8100 included in the \$46,300, a second escrow had been filed with the Chicago Title and Trust Company increasing the deposit of one of the real vendors named Bilek from \$6400 to \$14,500, and directing the Chicago Title and Trust Company to pay the difference of \$8100 to Murphy. This second escrow was signed by Fleming, a clerk in Petzer's office, in the name of Trotter and not by Bilek himself. Pursuant to directions, the Chicago Title and Trust Company paid the \$8100 to Murphy, who endorsed it to a man named J. J. Riden, who was connected in business with the cross complainant and who was associated with Petzer in many of the purchases of property for the cross complainant. Petzer testified that Riden "most always" owed him money.

We are of the opinion that Petzer has not honestly accounted for the deficit of \$10,680 in the transaction in question, namely, the Trotter purchase; that he should not be allowed any commissions for the purchase, and that he should pay ^{to} the cross complainant the amount of the deficit, that is \$10,680.

In the purchase of property known as the Edgerton purchase there was one lot. Petzer reported that he purchased this lot from William C. Edgerton, and gave his check to Edgerton for \$12,500. Edgerton's receipt was returned by Petzer for that amount. The check of Petzer was payable to John C. Farwell, who purported to be attorney in fact for Edgerton. The check was endorsed by Farwell to the Chicago Title and Trust Company with directions to pay Nicholas J. Kremer \$9000, and Farwell \$2000 and \$1500 respectively. Edgerton never had title to the lot. The escrow held by the Chicago Title and Trust Company, directing the payments to Kremer and Farwell, recited that the payments were to be made upon receipt of a warranty deed executed by Fridolin

Baumgartner and Helena Baumgartner, his wife. The Chicago Title-

and Trust Company issued checks to Kremer and Farwell. The check for \$1500 to Farwell was endorsed to Fetzner and deposited in Fetzner's bank. When Fetzner's attention was called to the check on the trial, he said the check may have been given to him by Farwell "to pay some money that Farwell owed" him, "and it was not for commissions." Fetzner testified that he and Farwell had been associated in business transactions. Farwell testified that he did not know Edgerton; that he "must have been attorney in fact for him;" that he "must have" received the \$12,500 for which he receipted as Edgerton's attorney in fact, but that he did not know what he "did with the money." In regard to the \$2000 check issued to Farwell by the Chicago Title and Trust Company, Farwell testified as follows: "If endorsed by me I must have gotten the money. For what I don't remember." As to the check for \$1500 paid to Farwell by the Chicago Title and Trust Company, and endorsed by Farwell to Fetzner, the testimony of Farwell was as follows: "It may be that the \$1500 was a repayment of original deposit." Kremer, a clergyman, testified that if the transaction was "the Baumgartner property" he remembered "their having some money put in escrow for them;" but that he "never received any money from anyone and no money passed through" his hands; that he "was simply helping out his parishioners."

We are of the opinion that in the transaction in question, namely, the Edgerton purchase, Fetzner was guilty of fraud, and that the cross complainant, therefore, was entitled to the lot at its fair cash market value.

The estimated value of the lot on the basis of the other lots in the same block was \$4000. No evidence was offered by Fetzner as to the value of the lot. The difference between the estimated value of the lot, \$4000, and the price reported by Fetzner, \$12,500, was \$8,500. We think that Fetzner should pay to

the cross complainant the deficit of \$3,500.

In the purchase of the property known as the Matthews purchase there were five separate lots. Petzer reported the purchases of the lots in a single purchase from Charles E. Matthews, a dummy, for a total amount of \$77,500; and returned Matthews' receipt for \$77,500 as a voucher. The real vendors received only \$63,350. Two checks of Petzer were made out for the \$77,500, one check for \$7500 and the other for \$70,000. The check for \$7500 was payable to Arnold H. Brantigan and endorsed "Charles Matthews, Arnold H. Brantigan, Joseph B. Flemming." This check was paid into the account of Flemming, who was Petzer's clerk. The check for \$70,000 was endorsed by Matthews; and Petzer testified that his "guess would be that the check" was deposited to his account. The titles to two of the lots, owned respectively by parties named Ward and Kroger, were never held by Matthews, but Petzer included those lots in Matthews' receipt. The Chicago Title and Trust Company held the escrow in the Kroger transaction; and the escrow shows that Petzer's check for \$35,000 was deposited with instructions to pay Kroger \$21,500, and John C. Farwell \$2000 and \$11,500 respectively. The \$2000 was paid by the Chicago Title and Trust Company by check to Farwell; and Farwell endorsed the check to Petzer, and Petzer deposited it in his bank.

In the purchase in question, namely, the Matthews purchase, the deficit was \$14,150. Petzer admitted that the real vendors did not receive \$77,500, the amount he falsely reported as having been paid for the lots. He attempted to explain the deficit, but in view of the undisputed facts which we have stated in regard to the transaction, we do not think that his explanation should be accepted as true. His testimony was as follows: "In the Matthews transaction I paid Brantigan my check for \$7500; Yeager [one of the real vendors] \$6,200; Farwell \$35,000; Kraemer [one of the real

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venders] and Fleming together \$26,000; Matthews my check for 7380 for \$150; and then I gave Peters my check 7377 for \$4500, of which Peters gave me \$1250 in the transaction by error, and so it made a net loss of \$350."

It follows from the views we have expressed in regard to this transaction, the Matthews purchase, that Fetzer should be required to pay to the cross complainant the amount of \$14,500.

In the purchase of property referred to as Block 35 there were five separate purchases. In three of the purchases there were deficits between the amounts actually paid to the vendors and the amounts reported as paid by Fetzer. The total of the deficits was \$2,050. Fetzer accounts for this amount by claiming commissions for the same amount. As we have previously stated, that in our opinion Fetzer should not be allowed any commissions at all, it follows that Fetzer should pay to the complainant the sum of \$2,050.

In the purchase of property known as the Kellogg purchase, there were two parcels of land. One of these Fetzer reported as having cost \$27,000 when in fact only \$25,000 was paid to the real vendor. In this transaction the Chicago Title and Trust Company returned by check to Fetzer's firm \$2000. In passing upon the vouchers in the transaction Kappes approved the check.

In the purchase of property known as the Harris-Ballard purchase Fetzer reported the cost at \$42,000. The price actually paid the vendor was \$40,000. In this transaction Kappes approved a check for \$2000 payable to Fetzer's own firm. Furthermore, the contract for the purchase of the property in this transaction was drawn by Kappes and recited that the purchase price was \$40,000.

In the purchase of property known as the Carpenter-Fairbanks purchase Fetzer reported the cost of the property at

1. The first part of the report is a general statement of the purpose of the study. This is followed by a brief review of the literature on the subject. The third part of the report is a description of the methods used in the study. This is followed by a description of the results of the study. The final part of the report is a discussion of the results and their implications.

It is believed that the above is the correct interpretation of the above information, and that the above is the correct interpretation of the above information.

There were five separate buildings. In each of the buildings there were several bedrooms for women and only one for the men. In the basement of building number 2 we found 14

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There are several other things that I would like to mention. I am very grateful to you for your letter and for the information that you have provided. I will be sure to pass it on to the appropriate authorities. I am also very interested in the results of the investigation and will be sure to keep you informed of any developments. Thank you very much for your cooperation and assistance.

1. The purpose of this study is to determine the effect of the use of the word "and" in the title of a research paper on the number of citations it receives.

very common in the lower part of the hill, and is found in the same position as the other fossils. It is found in the same position as the other fossils.

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\$27,500. The vendor received only \$25,500. In this transaction a check for \$2000 was returned by the Chicago Title and Trust Company to Fetzner's firm. Kappes approved the check.

In the purchase of the property known as the Cummings property Fetzner reported the cost of the property at \$32,750. The price paid the vendor was \$35,000. In this transaction the Chicago Title and Trust Company returned by check to Fetzner's firm \$1750. Kappes approved the check.

^{four}
In the above purchases, namely, the Bellegs, Harris-Baliard, Carpenter-Fairbanks, and Cummings, the total deficits amounted to \$7,500. Fetzner claims that this amount was due to him for his commissions. As we do not think that he is entitled to any commissions, we are of the opinion that he should be required to pay to the complainant the sum of \$7,500.

The question whether Fetzner should be credited with the alleged payments by him to Thomas for "railroad purposes" is discussed at length by both counsel for the cross complainant and counsel for Fetzner. The total of the alleged payments for "railroad purposes" is \$212,000. This amount is composed of the following items, to which we have previously referred: \$60,000 in the Busse campaign; \$40,000 in the Cobb purchase; \$50,000 in the Keller-Hafer purchase; \$17,200 in the Gilchrist purchase; \$14,800 in the Peters purchase. The only testimony as to these alleged payments for "Railroad purposes" is the testimony of Fetzner. The specific railroad purposes for which any one of the alleged payments was made was not stated by Fetzner, except as to the alleged payment of \$60,000 for a contribution to Busse's campaign fund; and with the exception mentioned there is no evidence whatever in the record to show the specific railroad purpose for which any of the alleged payments was made. According to Fetzner all of the payments to Thomas were made

in currency. The only evidence that the payments were made to Thomas, other than Fetzer's testimony, were certain notations on Fetzer's check stubs which, according to Fetzer, indicated that the payments were made to Thomas. The check stubs from November 6, 1906, to March 4, 1907, during which period Fetzer made three of the alleged payments to Thomas, were lost or destroyed after having been produced at the trial. It may be stated in passing that during this period from November 6, 1906, to March 4, 1907, the evidence shows that Fetzer received from the cross complainant \$715,000 for disbursement.

The alleged payments to Hanley for "railroad purposes" were made, according to Fetzer, by check. There is, however, no evidence whatever except Fetzer's testimony that the payments were made for railroad purposes. In our previous discussion of the payments to Thomas and Hanley, in connection with specific purchases, we have stated the amounts of the payments in lump sums, which were testified to by Fetzer. But Fetzer's testimony also shows that some of the payments were not made in lump sums, but that the lump sums represented the total of separate payments in smaller amounts. According to Fetzer's testimony the amounts of the payments ranged from \$200 to \$50,000 and covered a period from February 4, 1907, to July 7, 1908. When the payment on the latter date was made Thomas had ceased to be president of the cross complainant. The question arises as to what possible railroad purpose, on behalf of the cross complainant, Thomas could have applied that amount, after he had ceased to be president of the cross complainant.

A summarized statement, according to Fetzer's testimony of the amounts of the payments, the dates of the payments, and the notations on the check stubs in regard to the payments, exclusive of the \$60,000 for the Busse campaign fund, is as follows:

Alleged Payments to Thomas for "railroad purposes."

Febr 4, 1907,	\$3,000	Payable to currency. Endorsed Joseph B. Fleming. Initials "B.T." on list of lost stubs.
Febr 11, 1907,	6,000	Payable to currency. Initials "B.F.T." on list of lost stubs.
Febr 15, 1907,	6,000	Payable to currency. In blue pencil in circle "W.T.F." On list of Lost stubs initials "B.F.T."
March 14, 1907,	50,000	Payable to currency. Endorsed John C. Fetzer.
March 27, 1907,	30,000	Payable to Edgar A. Cobb. Endorsed by Cobb and bears stamp of Nat. Bk. of the Republic
Nov. 7, 1907,	1,000	Check to currency, endorsed John A. Chea, stub marked "B.T."
Nov. 7, 1907,	1,000	Currency Green check. Stub marked "B.T."
Nov. 11, 1907	500	Order of Edward H. Peters.
Nov. 12, 1907,	500	Payable to order of Nelson M. Lambert. Stub marked "B.T."
Nov. 15, 1907,	5,000	Order of and endorsed by J.B. Fleming. Stub marked "currency B.T."
Nov. 16, 1907,	900	Order of T. McGough; stub marked "Currency B.T."
Nov. 16, 1907,	500	Payable to Edward H. Peters, Stub marked "E.H. Peters, currency B.T."
Nov. 18, 1907,	4,000	Sol Klein check for \$10,200 (\$43,928, 1125).
Nov. 30, 1907,	3,400	Check payable to Joseph B. Fleming.
Dec. 7, 1907,	3,000	Payable to Edward H. Peters; stub marked "currency B. T."
Dec. 7, 1907,	4,000	Payable to Sol. Klein.
July 7, 1908,	3,000	Order of B. Thomas.
No date is shown for this payment,	200	Currency without check mentioned by Fetzer.
<hr/>		
Total to Thomas.....	\$122,000	

Alleged payments to Henley for "railroad purposes."

Feb. 14, 1907	\$10,000	Payable to Wm. J. Henley, endorsed to "S.T. Murdock, Wm. J. Henley. Draft payable to order of W. J. Henley. S. T. Murdock."
Feb. 29, 1907,	10,000	Payable to order of W. J. Henley. Endorsed by Henley. Stamp is Union Trust Co.
May 9, 1907,	5,000	Payable to order of W. J. Henley. Endorsed by Henley. Stamp of Union Trust Co.
Nov. 1907	<u>5,000</u>	C. & W. I. 4% bonds.
Total to Henley \$ 30,000		
Total to Thomas and Henley \$152,000.		

Adding to the total of \$152,000 the amount of \$60,000 for the Busse campaign fund, we have a final total of \$212,000.

Counsel for Fetzer maintains that the evidence does not show a conspiracy between Fetzer and Thomas to defraud the cross complainant; that Fetzer's testimony as to the payments to Thomas for "railroad purposes" is true, and that there is evidence which corroborates his testimony.

Counsel for Fetzer further contends that the payments to Thomas were not unlawful diversions of the funds of the cross complainant; that Fetzer was justified in making the payments, and that Fetzer's account should be credited with the amounts of the payments.

The task which confronted counsel for Fetzer was no difficult that, in our opinion, it could not be accomplished. We think, however, that counsel for Fetzer has presented Fetzer's side of the controversy with as much skill and force as it could be presented in the circumstances. The contentions of counsel for Fetzer which are argued elaborately and emphasized by frequent repetition, may be stated substantially as follows: That the evidence shows that Thomas was the "dominating spirit," "practically czar" of the cross complainant, in fact the cross complainant itself; that with full

Alleged Payments to Various Tax Exempt Organizations

May 11, 1967	\$20,000	Payment to the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.
May 11, 1967	10,000	Payment to the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.
May 11, 1967	5,000	Payment to the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.
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May 11, 1967	5,000	Payment to the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.

Total for May 11, 1967 \$100,000

Total for May 11, 1967 \$100,000

Added to the total of \$100,000 the amount of \$50,000

for the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.

Grand total for May 11, 1967 \$150,000

and also a contribution for the purpose of the J. Edgar Hoover Library.

Grand total for May 11, 1967 \$150,000

for the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.

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for the J. Edgar Hoover Foundation for the purpose of the J. Edgar Hoover Library.

Grand total for May 11, 1967 \$150,000

knowledge of the officers, directors and stockholders of the cross complainant, Thomas had for years "caused irregular vouchers to be made and cashed by or through his subordinate officers and agents so that cash would be available for his use without requiring a record of its actual use to be made upon the books" of the cross complainant; that these vouchers would be charged to various funds of the cross complainant, such as the "track elevation" fund and "legal expenses" fund; that some of these vouchers were issued to obtain funds for political contributions; that Fetzner "does not claim to have had any personal knowledge" of this power and practice of Thomas, but that Fetzner "knew" by general repute that Thomas "ran the company." Counsel for Fetzner then continues his argument by maintaining that not only was this general power and this general practice of Thomas shown by the evidence, but that there was a "particular occasion during the period of Mr. Fetzner's dealings" where this power and practice generally exercised by Thomas, in respect of the issuing of irregular vouchers to obtain money for railroad purposes could have been employed; that this "particular occasion" existed in the fact that a bill known as bill 777 was pending in the legislature of the State of Illinois, which, although of a general nature, was actually intended as remedial legislation to cure an alleged defect in a bond issue of the cross complainant in the amount of \$50,000,000; that Henley was in charge of securing the passage of bill 777; that the evidence shows that while the bill was pending Fetzner, at the direction of Thomas, paid Henley \$50,000 to be used for "railroad purposes;" that the bill was passed; that it is not contended that money was used corruptly to secure the passage of the bill; that money could have been used lawfully for "honest publicity, employment of able counsel to press legitimate arguments to committees, the collating of similar laws in other jurisdictions;" that the evidence, however, shows clearly that money was used legitimately or

illegitimately to obtain the passage of the bill; that Fetzner did not know any "of these things" in respect of the bill at the time of its pendency or passage.

The conclusion which counsel for Fetzner draws from his argument, as we have attempted to outline it, is that Fetzner's testimony "that he was told by Benjamin Thomas that the money should be paid to Thomas or to Henley, and that it was to be used for railroad purposes" was "convincingly" corroborated by the evidence.

Counsel for Fetzner also reaches the conclusion that the money, or a large part of the money, alleged to have been paid by Fetzner to Thomas and Henley for "railroad purposes" was used to obtain the passage of bill 777. This conclusion is thus stated by counsel for Fetzner: "The corroboration, however, goes much further and is, we respectfully submit, as convincing as circumstantial evidence can be that such money or a large part of it, was in fact used whether legitimately or illegitimately, is a matter of conjecture, to obtain the passage of Bill 777." The implication of the entire argument of counsel for Fetzner in regard to the alleged payments for "railroad purposes" is that Fetzner had the legal right to rely on Thomas' statement to him that the money was to be used for "railroad purposes," although it is expressly alleged by counsel for Fetzner that Fetzner had no knowledge of the power and practice attributed to Thomas in respect of the issuing of irregular vouchers, and also had no knowledge of the pendency or passage of bill 777.

We are of the opinion, however, that even if it be granted that the testimony of Fetzner that Thomas told him the money was to be used for "railroad purposes" was corroborated, Fetzner had no legal right in the circumstances to rely on the statement of Thomas or to give him the money for alleged "railroad purposes." The evidence does not show a single instance, except in

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the case at bar, where Thomas ever diverted to another and different purpose funds of the cross complainant which had been devoted to a specific purpose, and directed that the funds so diverted should be concealed in a false report to the cross complainant. Although Thomas may have been the "dominating spirit" and "a czar" in the exercise of his powers as president of the cross complainant, he was not a dictator of absolute authority. The rules of law defining and controlling the implied powers of presidents of corporations were not suspended or disregarded as between Thomas and the cross complainant. Counsel for Fetzner does not contend that Fetzner had actual knowledge of a course of dealings between Thomas and the cross complainant, which would have justified Fetzner in believing that Thomas had the power to receive from Fetzner money to be used for "railroad purposes." In fact, counsel for Fetzner admits that Fetzner had no personal knowledge of the power and practice of Thomas in respect of directing the issuing of irregular vouchers for money used for "railroad purposes." And the rule is that if a person does not know of a course of conduct pursued by a party with whom he is dealing which would imply authority in such party to act in the deal, then the person cannot rely on such a course of conduct as a defense. Hawson v. Curtis et al., 19 Ill. 435, 474, 475; Merchants National Bank v. Nichols and Company, 223 Ill. 41, 50. The evidence shows that Fetzner knew that in the case at bar Thomas was not exercising uncontrolled authority. In his bill to set aside the award Fetzner alleged on information that the original contract between him and the cross complainant in regard to the purchases of property for the complainant was made "pursuant to a resolution of the Board directing Thomas 'to make such purchases of said property.'" And the evidence shows this to be a fact. Furthermore, in regard to one of the conversations between Thomas and him, Fetzner testified as follows: When I "was sent for to buy

the property, it was somewhat of a surprise, as I remember it now. Thomas said that the directors had taken it up and decided to go ahead at this time, but that they could not buy the Keller Coal Yard, the Hafer & Men Coal Yard, nor the Gorkery Coal Yard, but that they could purchase so much of the property as they could get for a reasonable price, but for the present I should keep north of 26th street." Again in respect of a letter which Thomas requested Fetzer to write in connection with the purchase of the Gorkery Coal Yards, Fetzer testified that he "understood that the purpose of it was to report to the board of directors the entire transaction in that vicinity." Also in the purchase of the Gorkery Coal Yards Fetzer was informed through the correspondence of Thomas and Happee and Clark, the auditor of the cross complainant, that the board of directors had passed a resolution requiring the original receipts of vendors in real estate transactions with the cross complainant to be furnished to the auditor of the cross complainant. Fetzer also knew that in the purchase of the Gorkery Coal yards the auditor had refused to accept the receipts signed by Fleming and had demanded the receipts of the real vendors. As additional evidence that Fetzer knew that Thomas recognized the authority of the directors of the cross complainant, we refer to the efforts of Fetzer to obtain Delano's approval of and consent to the purchase of the Keller-Hafer Coal Yards. Moreover, the repeated and insistent demands of Thomas for money for railroad purposes, extending over a long period of time as testified to by Fetzer, should have made Fetzer doubt the truth of Thomas' statements that he needed the money for railroad purposes. One would suppose that in the circumstances, an inquiry would have arisen in Fetzer's mind as to what possible "railroad purposes" could require ^{the expenditure of} so much money. We can not believe that Fetzer was so credulous as to trust implicitly in

the statements of Thomas. Such credulity on the part of Fetzner would be wholly inconsistent with the shrewdness and business experience which the evidence shows he possessed. The fact is, however, that his own testimony indicates that he doubted whether Thomas' statements in regard to using the money for "railroad purposes" were true. In the Cobb purchase he testified that he took Cobb with him to the door of Thomas' office. In the matter of the Kensington and Eastern Railroad Company, his testimony shows that he did not consider the transaction an honest one. His testimony also shows that he refused to make the payments to Henley in currency; and that at times he hesitated about making the payments to Thomas.

We are of the opinion that the evidence is amply sufficient to establish the fact that Fetzner was put upon inquiry to ascertain Thomas' authority to receive the money alleged to have been paid to him and Henley for "railroad purposes."

Furthermore, as we have previously stated, we are of the opinion that the board of directors of the cross complainant did not know of the acts of Fetzner, Thomas and Henley in regard to the alleged payments of money for "railroad purposes." There is no evidence, either direct or circumstantial, from which such knowledge on the part of the directors may be inferred. On the contrary, the conduct pursued by the directors in ordering an investigation of the relations between Fetzner, Thomas and Henley in the various purchases, and in directing that the present suit be brought against them, are facts which should not be ignored in determining whether the directors had knowledge of the dealings of Thomas, Fetzner and Henley in regard to the alleged payments of money for "railroad purposes." It is highly improbable that the directors would have adopted the course that they did if they had had knowledge of and acquiesced in the fraud.

In regard to the argument of counsel for Fetzner relating to bill 777, we are of the opinion that the conclusion of counsel that the evidence shows that the money, or a large part of it, alleged to have been paid by Fetzner to Thomas and Henley for "railroad purposes" was used to obtain the passage of the bill, is wholly untenable.

Counsel for Fetzner does not contend that there is any fact or circumstance from which it may be inferred directly that the money, or a large part of the money, alleged to have been paid by Fetzner to Thomas and Henley, was used to obtain the passage of bill 777. Counsel for Fetzner draws that presumption only from circumstantial evidence which he says is convincing. The circumstantial evidence which counsel for Fetzner maintains is sufficient to justify the presumption is as follows: Delano wrote Thomas a letter in regard to bill 777, in which he said: "I believe we should in a quiet way, get the legislation which Judge Henley and our counsel concluded is desirable." Subsequently to the writing of this letter Morten D. Hull, a prominent member of the legislature, told Delano that he thought money was being used to secure the passage of bill 777. Delano told Hull that he was positive that money was not being passed. Delano spoke to Thomas about the matter and after Thomas had assured him that money was not being used, Delano took Thomas to see Hull, and Thomas made a categorical statement to Hull that no money was being used. Hull asked Thomas to write him a letter to that effect. Thomas wrote two letters to Hull explaining the nature of the bill. In the letters Thomas makes the following statements: "There is no reason why this explanation should not have been made when the bill was presented. There is nothing mysterious about the matter. It is not intended to and does not apply to any other railroad. The defect does not affect the ownership of the Railroad [the cross complainant] in any way. Henley will be in

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Springfield and will be glad to confer with the Legislature in the matter. *** There was never any reason for secrecy in this matter, other than the fear that the securities of the company might possibly be affected in some way on account of a possible misapprehension on the part of the public of the reasons for asking for this validated act. Henley probably said nothing because of the above reason, which was a mistake, in view of what has transpired. The act has nothing to do with the Alton deal or any other. When you are satisfied, hope that you will use your best efforts to secure the passage of the bill. The only possible reason for any concealment whatever is explained above."

It will be observed that instead of the record showing by circumstantial evidence that the money, or a large part of the money, alleged to have been paid by Fetzer to Thomas and Henley, was used to secure the passage of bill 777, the record shows direct evidence to the contrary. But counsel for Fetzer maintains that Thomas' categorical denial to Hull should not be believed; in other words, to put it in plain language, that Thomas lied to Hull. There is no evidence whatever to justify such a conclusion; and furthermore, Thomas is corroborated by Delano's statement to Hull that money was not being used. Hull believed Thomas and Delano, and gave his support to the bill. Counsel for Fetzer, however, arbitrarily rejects the denials of Thomas and Delano; and maintains that the only legitimate inference from the phrase "in a quiet way," which Delano employed in his letter to Henley in regard to bill 777, was that money was to be used to obtain the passage of the bill. Delano explained that the only meaning he intended to convey by the phrase was that publicity should not be given to the defect in the bond issue lest the cross complainant might be "held up" in its efforts to get legislation; that "a mere statement telling about the matter would make it very much more difficult, perhaps, to get legislation, and open the door

to very serious trouble."

Counsel for Fetzer maintains that "it is unimportant whether Mr. Delano intended to advise Benjamin Thomas to have Judge Hanley use anything more than proper methods to obtain this legislation; that "the question is what Mr. Delano, if he was a man of discerning mind, would have expected Judge Hanley and Mr. Thomas to understand from such language." Expressing the insinuations against Thomas and Hanley a little more clearly, counsel for Fetzer, after referring to Thomas and Hanley as "intensely practical" men, states further "that whatever the real purpose in Delano's mind was, that his instructions, coupled with the habits and practices of the two officers of the appellant company, for whose instruction the letter was intended, amounted in their judgment at least to a full warrant for what they did."

Apparently counsel for Fetzer is expressing euphemistically what, in ordinary English, means that Thomas and Hanley were men of low moral principles, and were so accustomed to use money corruptly that the only interpretation that they would place on the phrase, "in a quiet way," was that money was to be used corruptly in obtaining the passage of bill 777. The phrase, however, should be construed according to the meaning that men of customary morality would give to it, and when so construed we do not think that reasonably it would bear the interpretation counsel for Fetzer would have us put upon it. Moreover, it is the rule, as stated in McKenna v. Michelberry, 242 Ill. 117 (p. 134), that "If the motives and designs of the parties charged with fraud or collusion may be traced to an honest and legitimate source as to a corrupt one, the former explanation ought to be preferred." We think that Delano's explanation as to what he intended by the phrase is a fair and reasonable one, and that the interpretation which counsel for Fetzer would have

us adopt, is a distorted and unreasonable construction.

In this view of the evidence it follows that there is no evidence whatever, whether circumstantial or direct, from which counsel for Fetzer may presume that the particular money alleged to have been paid by Fetzer to Henley for "railroad purposes" at the direction of Thomas, was used to obtain the passage of bill 777. The only method of reasoning by which counsel for Fetzer could reach such a conclusion on the evidence as we interpret it, would be to base a presumption on a presumption; that is by presuming first that the pendency of bill 777 in the legislature presented a situation where money possibly might have been used to obtain the passage of the bill, and then from such presumption, further presuming that the particular money in question was used to obtain the passage of the bill. Such argument would be open to two objections: First, that the fact that any money whatever was used to obtain the passage of the bill is not clearly established by the evidence, and for that reason the presumption could only be that money possibly might have been used; and, second, that the presumption that the particular money in question was used to obtain the passage of the bill is based not only on a presumption, but on a presumption that is drawn from an unproved fact. Such reasoning is not permissible in logic, as it leads only to suspicions, not to probable conclusions. The rule is well settled that a presumption cannot be based upon a presumption. Globe Accident Insurance Company v. Garisch, 163 Ill. 625, 629; Gordon v. Schoenfeld, 214 Ill. 226, 229, 230; United States v. Ross, 2 Otto (U.S.) 281, 283, 284.

In the case of United States v. Ross, *supra*, the court said (pp. 283, 284): "No inference of fact or law is reliable, drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed. The law requires an open,

the bill, is a legislative and not a judicial question.

In this view of the relation of the bill to the

constitutional question, whether constitutional or not, it is

clearly the duty of the court to decide the constitutional

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visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences. *** A presumption which the jury is to make is not a circumstance in proof; and it is not, therefore, a legitimate foundation for a presumption."

A complete answer to the entire argument of counsel for Fetzner in regard to the alleged payments by Fetzner to Thomas and Henley for "railroad purposes," is that the evidence shows that Thomas, Henley and Fetzner were engaged in a conspiracy to defraud the cross complainant. As we view the evidence Fetzner gave money to Thomas and Henley but did not give money for "railroad purposes." The money, in our opinion, was given to Thomas and Henley for their own personal use, and was their share of the funds fraudulently obtained from the cross complainant in the conspiracy. The payments of the money to Thomas and Henley by Fetzner constitute part of the evidence of the conspiracy.

We do not deem it necessary to enter into a detailed discussion of the evidence relating to the conspiracy. In considering the evidence in regard to the various purchases, we have already indicated our views as to the conspiracy. Furthermore, we have set out at great length evidence bearing on the question of the conspiracy. We will, however, call attention to one fact to which we have not referred, and which we think tends strongly to show the consciousness of guilt on the part of both Thomas and Fetzner; and that is the attitude of both Thomas and Fetzner towards Edward B. Pryor, a vice president of the cross complainant, who began the investigation for the cross complainant of the transactions of Thomas and Fetzner. According to Pryor's testimony, Thomas refused to give him any information; and Fetzner made false statements as to his check stubs. Pryor's testimony, as quoted from the

abstract, was as follows: "I made an investigation as to the cost of these subsequent purchases made in 1907, at the request of Mr. F. A. Delano, the President of the Wabash Railroad Company [the cross complainant] sometime in the fall of 1907. I went to the office of the Chicago & Western Indiana Railroad Company [the cross complainant] and told Mr. B. Thomas, the President of the Western Indiana [the cross complainant] that Mr. Delano had asked me to ascertain the average cost per square foot of these properties; and Mr. Thomas told me that he had made a report to the Board of Directors, which seemed to be satisfactory to everyone but Mr. Delano, and that he could not give me the information. Knowing that Mr. Fetzer had made the purchases, I went to his office and introduced myself to him. I had never met him before. I introduced myself as the fourth vice president of the Wabash Railroad Company, and told him that I had been to Mr. Thomas' office to get this information for Mr. Delano, but had not succeeded, and that I had come down to see him and see if he could give me the average cost per square foot. He said he thought he could do so, without any trouble. This was in Mr. Fetzer's office in Chicago. We went into Mr. Fetzer's private office and sat down at the flat topped desk, something like this (indicating), and I think there was another desk immediately at his right hand. I sat down at his left hand; and he got out a lot of stubs to checks, he took them out of a little compartment in his desk. My best recollection is that he unlocked the compartment and took these papers out of there, including a little memorandum book. I told him that if I could get the numbers of the lots and the front feet and the depth, that I could get the total number of square feet, and dividing that into the cost could get the average cost per square foot. At that time I had no knowledge of the cost. I had some memorandum - some blank paper there, and

Mr. Fetzer proceeded to give me the block numbers and the lot numbers. *** He also gave me the total cost, which I put down. In some instances he also gave me the names of the grantors or grantees and I think I put those down. **** He was referring to his check stubs from time to time as he gave me these amounts. He had these check stubs right out with the other papers. As he turned over these check stubs I noticed the name of Mr. Kappes and Mr. Thomas. After he had finished giving me the description of the property, I asked him if he had any objection to giving me or my making a list of the checks that he had given to Mr. Kappes, and he said no.***

When I saw the check stubs, one or more, with the name of B. Thomas, I said, 'What were those checks for that were in favor of Mr. Thomas?' He said, 'There were no checks there in favor of Mr. Thomas.' I said, 'Oh, yes, I saw three, one for \$5,000, one for \$10,000, and one for \$25,000.' He said, 'They had nothing whatever to do with the Western Indiana [the cross complainant] matter, Mr. Thomas and I were interested in an outside deal.' I said, 'Is that true as to all of them?' He said, 'I know it is true as to one - I think it was the \$5,000 check.' And I said, 'How did you keep that account with the Western Indiana? [the cross complainant]. Did you run it as an open account, and for a lump sum advance made to you, the same as was done in the Wabash?' He said, 'Yes.' I said, 'Then possibly some of these items were amounts that you returned to the Chicago & Western Indiana [the cross complainant] as not needed?' He said, 'That may be true as to two of them, but it was not as to one. I know that Mr. Thomas and I had an outside deal, and that, I think, was the \$5,000 check.' I reached over and picked up the check stubs to go through them to see if that was all of the checks in favor of Mr. Thomas, but he reached over and took it away from me, and I did not press the matter at all, did not look into them at all.

And then I gathered all my papers together and went back to Mr. Delano's office and made my report to him."

From our opinion that Fetzer was guilty of fraud, it follows that he is not entitled to commissions in any of the purchases. According to our interpretation of the evidence, as we have previously stated, all of the purchases were made by Fetzer as agent of the cross complainant under one contract with the cross complainant; and the series of purchases were only parts of that contract. It is the well settled rule that an agent is allowed commissions only where he has rendered honest and efficient service. If the agent has been guilty of fraud against his principal, the agent forfeits his commissions. Hafner v. Herren, 165 Ill. 242, 247; Fish v. Seesberger, 134 Ill. 30, 34.

In the different purchases which we have discussed we have indicated deficits, respectively, as follows: Hanks purchase \$30,000; Jennings-Barry purchase \$94,650; Landers-Minton-Loesch-Flanning purchase \$92,310; Corkery Coal Yards purchase \$150,000; Cobb purchase \$40,000; Keller-Hafer purchase \$135,000; Gilchrist purchase \$34,613; Lewins-Graves-McCauley purchase \$15,240; Peters purchase \$17,473; Trotter purchase \$10,650; Edgerton purchase \$8,500; Matthews purchase \$14,150; Block 25 purchase \$2,050; Kellogg purchase \$2,000; Harris-Ballard purchase \$2,000; Carpenter-Fairbanks purchase \$2,000; Cummings purchase \$1750. The total amount of these deficits is \$662,391. We think that interest at five per cent. should be computed on the amount of each deficit from the date that Fetzer made his final report in the purchase corresponding to the deficit, to the date of the entry of the judgment in this court.

The cross bill of the cross complainant alleges that Thomas and Kappes have paid to the cross complainant the sum of \$76,000. As the evidence shows that all of the money that Thomas

and then I purchased all my square property and went back to it.

Deane's affidavit was made on August 21, 1877.

From our affidavits dated August 21, 1877, it

appears that he is not entitled to compensation in any of the

cases, including the case of the defendant, as we

have previously stated, and of the defendant was made by Deane as

agent of the state commission, and we therefore find the state

claimant; and the order of the court was only made of that order.

Deane. It is the duty of the state to pay him as agent of the

state only, and not as agent of the state commission, as

it was found that he was acting as agent of the state commission, and

agent of the state commission, and we therefore find the state

claimant, and we find that he is not entitled to compensation.

Deane v. State, 111, 112, 113.

As the defendant's statement was made in 1877, it

was not made in 1877, and we therefore find the state

claimant, and we find that he is not entitled to compensation.

Deane v. State, 111, 112, 113.

Deane v. State, 111, 112, 113.

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Deane v. State, 111, 112, 113.

Deane v. State, 111, 112, 113.

and Kappen obtained in the various transactions were received by them from Fetzner, we think that the account of Fetzner should be credited with the \$75,000. Deducting this amount from \$652,391, the total amount of the deficits, there remains the sum of \$576,391.

It follows from the views that we have expressed that Fetzner should pay to the cross complainant the sum of \$576,391 with interest at five per cent. computed as we have indicated.

We are of the opinion that all of the costs should be taxed against Fetzner.

The decree of the trial court is reversed except as to the part directing Fetzner to pay to the cross complainant \$25,000, and as to that part it is affirmed; and the cause is remanded with directions to the trial court to enter a decree in favor of the cross complainant, the Chicago and Western Indiana Railroad Company, in the sum of \$576,391, with interest computed as we have indicated.

AFFIRMED IN PART; REVERSED IN PART,
AND REMANDED WITH DIRECTIONS.

Ketchett, P. J., and McSurely, J., concur.

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

vs.

JOSEPH CLANCY,
Plaintiff in Error.

ERROR TO CRIMINAL COURT
OF COOK COUNTY.

240 I.A. 635

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is a writ of error prosecuted by the defendant, Joseph Clancy, from a judgment of the Criminal court of Cook county, on a verdict of the jury finding him guilty of conspiracy and fixing his punishment at imprisonment in the county jail for the term of six months. This writ of error has been consolidated for hearing with the writ of error No. 29940 prosecuted by Dan Sasson from the judgment of the Criminal court of Cook county on a verdict of the jury finding him also guilty of conspiracy and fixing his punishment at imprisonment in the county jail for the term of six months. The two cases may be considered together and what we say in the present writ of error will apply to the writ of error No. 29940.

The defendant, Joseph Clancy, was indicted with Dan Sasson and other persons, whose names were unknown to the Grand jurors, for conspiring to coerce unlawfully persons engaged in the sale and distribution of candy and confectionery into joining an organization known as the Candy Drivers' and Salesmen's Union.

The errors assigned by the defendant are (1) that the trial court erred in denying the motion of the defendant for a bill of particulars; (2) that the evidence does not show that the defendant is guilty beyond a reasonable doubt; (3) that the trial court erred in ruling on the admission and rejection of evidence.

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Journal of Religion and Health

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(continued from page 6)

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and the question is if the new value is not null:

1970-1971

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1992 The author would like to thank all participants for their

As you can see, the first two lines of the code are identical to the code in the previous example. The only difference is that the `get` method is now a `getter` method, and the `set` method is now a `setter` method. This is the standard way to implement a `getter` and `setter` in a class.

• *Journal of Management Education* 27(1): 10-12

with 100% yield. The 100% yield was obtained by using 100% of the starting material.

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

continued to increase and will be higher in 2005.

The indictment contained 19 counts. We think it sufficiently informed the defendant of the charge of which he was accused. The indictment specifically named the persons whom it is alleged the defendant attempted to coerce, and also alleges that the coercion was attempted by injuring the property of these persons. The rule is well settled that whether the State shall be required to furnish a bill of particulars on the motion of the defendant rests in the sound legal discretion of the court; and that "it is only in cases where it is clear that there has been an abuse of this discretion that the denial of such motion is held to be error." People v. Munday, 280 Ill. 32, 50; DuBois v. The People, 200 Ill. 157, 164. We do not think that the court abused its discretion in denying the motion in the case at bar.

In discussing the sufficiency of the evidence counsel for the defendant contends that the evidence does not show that the defendant conspired to do the acts charged against him, and that the evidence shows that the injury to the property of the persons mentioned in the indictment was not committed by the defendant or by his direction, but by unknown parties who had no connection with the defendant.

The indictment charged that as part of the conspiracy the defendant injured the motor trucks of the following persons: Ralph W. Davis, Clarence P. Herdrich, Emil Boller, Frank Amberski, Charles L. Johnson, Theodore G. Dost and George Greub.

The evidence shows that all of these persons were in the candy business and owned their own trucks or automobiles; that the defendant tried to induce them to join the Candy Drivers' and Salesmen's Union; that when they refused to join, their motor trucks were injured shortly after their refusal by unknown parties.

The following testimony was given on behalf of the People:

Ralph W. Davis testified that he was a candy jobber and that he knew the defendant; that while he was carrying a bundle of goods from a store to his motor truck the defendant Clancy came up to him and asked him when he was going to join the Union; that he, Davis, said "Never;" that Clancy held up his hand as a signal, and as he did so "a bunch of men came over with him from a big touring car standing on the other side" of the street; that as he was putting the goods in the truck, Clancy started to talk to him about joining the Union, telling him that he would have to join the Union before he, Davis, "moved from that spot;" that he pushed Clancy to one side and told Clancy not to bother him; that the men stepped away from the head of the truck; that he, Davis, asked a policeman for protection, requesting the policeman to watch his truck while he went to get the rest of his goods; that when he got his goods the policeman was gone; that there was a crowd around the front of his truck; that he could not pull out the choke line to give gas to start out; that he looked at the inside of the hood and noticed that somebody had pulled the choke and gas line out of plumb and that he could not start; that he noticed that the radiator had been choked or marred in two places; that Clancy came over to him and said, "You see, we are able to take care of harder eggs than you are;" that Clancy also said that he, Davis, had better not leave until he had paid the money to join the Union; that he, Davis, finally started his truck and drove half a block, and when he stopped a big touring car stopped right in front of him and a couple of men got out; that Sasson was one of them; that two plain clothes men from the Maxwell street station came there and that he, Davis, drove away.

Clarence F. Herdrich testified that he was a wholesale candy jobber; that he knew the defendant Clancy; that he had a conversation with Clancy in which Clancy asked him if he "had already

[illegible]

signed up;" that he, Herdrich, said he intended to "sell his route," that he did not care to sign up that week; that Clancy said, "Well, you better get in before next week; you better get in or you will be up against it;" that he, Herdrich, drove in his automobile to a jobbing house; that two men stopped him, but he did not wait for them and went into the store; that he stayed in the store about an hour; that when he came out and got into his automobile he found that three tires were punctured.

Emil Boller testified that he was a jobber in the confectionery business; that while he was buying goods in a store he met the defendant Clancy; that Clancy said he was the president of the Candy Wagen Drivers and Salesmen's Union; that Clancy asked him whether he "wanted to sign an application;" that he, Boller, said he was not prepared to join a union as he had been conducting his own business for the past sixteen years; that Clancy said, "Don't you think it is a good thing?" that he, Boller, said, "I have not considered it;" that about a week later he met Clancy at the same place and Clancy said, "Didn't you sign an application for the local?" that he, Boller, said "No;" that again about a week after he, Boller, stopped in front of a store and three men came up and asked him if he "was ready to sign an application," and pay them \$10; that he said, "No;" that the defendant Sasson was one of the three men; that one of the men tapped him, Boller, on the shoulder and led him around to the back end of the car; that as soon as he, Boller, had turned his back he heard a whistling sound; that when he looked he saw a man walking away from the right tire of the car, and that the tire was punctured.

Frank Amberski testified that he knew the defendant Clancy; that he met Clancy when he, Amberski, was coming out of a store with candy; that when he, Amberski, was driving away in

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his car he was followed by men in two or three cars; that one of the cars "nosed" him off to the curbstone; that fifteen or eighteen men jumped out of the cars; that one of the men said, "Well, Amborski, are you going to join the Union?" that he, Amborski, said he was not in condition to join; that the man said, "You better cough up \$10.50 or it will cost you \$100 or \$150 to get away from here;" that the man told him to go back to the store and get \$10.50; that he, Amborski, went back to the store, got the money, and Clancy and Sasson came up and one of them asked if he had the \$10.50; that he gave Clancy a check for \$10.50 and Clancy gave him a receipt for an initiation fee and three months' dues in the Candy Drivers' and Salesmen's Union.

Charles L. Johnson testified that he was a candy jobber; that while he was in front of the store of a candy dealer the defendant Clancy came over and asked him about joining the Union, saying, "Today is the day, they have all signed up but you;" that he, Johnson, said, "As soon as I find out they have all joined, why, I will too, but not today;" that just about this time several police officers stepped up and told Clancy to quit bothering him; that when he, Johnson, drove away in his truck a machine pulled in front of him and several men got out and wanted to know if he was going to join the union; that he drove away and the car again pulled up in front of his truck and forced him to the curb; that a man jumped out of the machine and smashed the radiator of his, Johnson's, truck.

Theodore O. Dost testified that he was a jobbing confectioner; that just as he got out of his machine in front of a candy store Clancy and Sasson and three or four other men came up to him; that Clancy said, "Dost, I want you to join the Union this afternoon;" that he, Dost, said he would not join the Union; that Clancy said, "You better join this afternoon or you will get into

trouble;" that if he did not join today it would cost him 25 a week; that he, Dost, went into the store, left through a side door, got a car and drove to the Desplaines street station and asked for protection.

George Greub testified that he is a wholesale jobber; that while he was at a jobbing house he met Clancy, the defendant, who asked him to join the Union; that he, Greub, refused and drove to another jobbing house, and that Clancy and Sasson were there together with four or five other men; that they surrounded him and wanted to know if he would sign the paper; that he refused; that he then drove to another store; that after leaving this store Clancy and another man blocked him; that Clancy asked him if he would sign the paper; that he refused and drove to another store; that while he was there Clancy and another man drove up; that he, Greub, saw a man running to his car; that he, Greub, rushed out to get him, but by that time the man had cut the radiator of his, Greub's, machine in two places.

Six other witnesses gave testimony on behalf of the People similar to the testimony of the witnesses above cited.

There is no evidence on behalf of the defendant.

An offer of certain evidence was made on behalf of the defendant, but the court sustained an objection to the offer. We will consider later the question in regard to the ruling of the court.

We are of the opinion that the evidence shows beyond a reasonable doubt that the defendant was guilty of a criminal conspiracy to force certain persons to join the Candy Drivers' and Salesmen's Union. It is immaterial whether the evidence shows that the defendant himself actually committed the injuries to the trucks and automobiles. The evidence clearly establishes the fact that these injuries were part of the conspiracy in which the defendant was engaged. The evidence shows a clear connection

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The other witnesses have testified on behalf of the
 State in the testimony of the witnesses who testified.
 There is no evidence in favor of the defendant.
 The effect of certain evidence was said to be in the
 fact the court reached an opinion on the other. It will now
 state that the question is before the jury of the court.
 We say at the point that the evidence shows beyond a
 reasonable doubt that the defendant was guilty of a criminal
 offense of first degree murder in the case before the
 defendant's trial. It is immaterial whether the evidence shows
 that the defendant himself actually committed the injuries to the
 victim and defendant. The evidence clearly established the fact
 that these injuries were part of the conspiracy to which the
 defendant was joined. The evidence shows a clear prearrangement

between the conversations of the defendant with the owners of the trucks and automobiles and the injuries to the trucks and automobiles. The refusals of the owners of the trucks and automobiles to join the Candy Drivers' and Salesmen's Union and the injuries to their trucks and automobiles were not undesigned coincidences. The cumulation of the coincidences shows design.

In the case of The People v. Marx, 291 Ill. 40, the court said (p. 46): "A person who encourages the commission of an unlawful act cannot escape responsibility by quickly withdrawing from the scene."

In the case of Ochs v. The People, 124 Ill. 399, the court said (p. 422): "If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same, so as to complete it, with a view of the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. Nor is it necessary to prove that the conspiracy originated with the defendants, or that they met during the process of its conception, for every person entering into a conspiracy or common design already formed, is deemed, in law, a party to all acts done by any of the other parties before or afterwards, in furtherance of the common design."

Counsel for the defendant maintains that there is no evidence that the defendant entered into an agreement to do the acts charged against him.

In a conspiracy the unlawful agreement, independently of the overt act, constitutes the offense. (The People v. Blumberg, 271 Ill. 130, 134.) But the general rule in regard to the proof of the corpus delicti is that it is not essential that the corpus delicti should be established by evidence independently of

between the representations of the defendant and the facts of the
case and the evidence. The evidence in the case was not
sufficient to establish the facts of the case and the
defendant's version of the facts was not supported by the
evidence. The evidence was not sufficient to establish the
facts of the case and the defendant's version of the facts
was not supported by the evidence.

In the case of The People v. [Name], 1911, 111, 112, the
court said (p. 44): "It is not necessary for the prosecution to
establish the facts of the case by a preponderance of the
evidence. It is sufficient if the evidence is such that a
reasonable jury would find the facts of the case."

In the case of The People v. [Name], 1911, 111, 112, the
court said (p. 44): "It is not necessary for the prosecution to
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case by a preponderance of the evidence. It is sufficient if the
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court said (p. 44): "It is not necessary for the prosecution to
establish the facts of the case by a preponderance of the
evidence. It is sufficient if the evidence is such that a
reasonable jury would find the facts of the case."

the evidence which tends to connect the accused with the offense. The same evidence which tends to prove one may also tend to prove the other, so that the existence of the offense and the guilt of the defendant may stand together inseparably on one foundation of circumstantial evidence. Carroll v. The People, 136 Ill. 456, 463.

Counsel for the defendant contends that the trial court committed error in allowing the witness James Boyle to state why he joined the Union. Boyle testified that a couple of men asked him to join the Union; that he told them he was undecided; that they said, "Well, don't try to turn a wheel until you sign up;" that after the men left the defendant Clancy came up and told him that he "better sign up," saying, "We can't waste any more time here. I am going to leave now; either sign up or we will have to let the boys take care of you;" that he, Boyle, borrowed some money and joined the Union. Boyle then testified that the reason he joined the Union was that he "wanted to continue in business that day and did not want to be delayed."

We do not think that the ruling of the court constituted prejudicial error. Boyle merely stated as his reason for joining the Union what was the obvious inference from the circumstances.

Counsel for the defendant contends further that the court improperly allowed the witness Elmer Meisterling to testify to matters which happened out of the presence of the defendant.

Meisterling testified that he was asked by the defendant Clancy to join the Union; that he told Clancy the business was his father's; that after Clancy left he, Meisterling, drove his truck to a wholesale crackerjack company, referred to as Rueckheim's; that he, Meisterling, left his truck and went in the store; that he saw two men going to his truck; that

The witness who is called to the stand to testify in a case is sworn to tell the truth, so that the evidence of the witness is the basis of the judgment of the jury. The witness who is called to the stand to testify in a case is sworn to tell the truth, so that the evidence of the witness is the basis of the judgment of the jury.

Confronted with the evidence of the witness who is called to the stand to testify in a case is sworn to tell the truth, so that the evidence of the witness is the basis of the judgment of the jury. The witness who is called to the stand to testify in a case is sworn to tell the truth, so that the evidence of the witness is the basis of the judgment of the jury.

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when he went back to the truck he found a tire flat and a gash in the tire; that he went back to Rueckheim's. Meisterling was then asked: "Q. What happened after that?" and he answered, "They called for protection." He was then asked, "Did the police come?" and he answered, "Yes." At this time neither of the defendants was present. We think, however, that is immaterial, as the evidence shows that the defendant was a coconspirator with unknown parties, and therefore all evidence relating to the conspiracy would be admissible whether the defendants were present or not. We think that the evidence in question was part of the res gestae.

Counsel for the defendant objects further that the trial court erred in allowing the State's attorney to ask a leading question of the witness, Joseph Meyer.

We do not think the objection is well taken. The leading question was allowed to be asked after the recollection of the witness had been exhausted.

Counsel for the defendant further contends that the court erred in not sustaining an objection to the following testimony of the witness Yano Ricordati: "I saw Clancy ask Davis to pay \$10 to join this. So, he did not want to join at that time. One of the sluggers said, 'Go ahead and jump the truck.' One of the fellows pulled out his hatchet and cut the radiator." Davis had already testified to the injury to the radiator of his car.

Counsel for the defendant does not indicate specifically the ground of his objection. We presume that his objection relates principally to the use of the term "sluggers." The trial court was not asked to strike the word from the record, nor to instruct the jury to disregard it. Furthermore, we do not think reversible error could be predicated on the use of the word in the circumstances.

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Counsel for the defendant assigns error on the action of the court in refusing to allow the defendant to make the following proof offered by the trial attorney for the defendant: "I expect to show that in the month of September, A. D. 1922, there was a certain organization in the City of Chicago, named The Candy Jobbers' Confectioners' Association, that a committee from that organization called upon Mr. Fitzpatrick of the Chicago Federation of Labor to have him, along with Mr. Clancy and another Union man, to address the organization and explain to them what benefits they would derive from affiliating with the Chicago Federation of Labor *** in reference to forming an organization or union to be known as the Candy Drivers' and Salesmen's Union, and that Mr. Fitzpatrick, at the request of the Committee of the Candy Jobbers' Confectioners' Association on September 21, A.D. 1922, addressed such meeting in reference to the benefits that they would derive from affiliating with the Chicago Federation of Labor, and I expect to further show by this witness that there was an organization affiliated with the Chicago Federation of Labor known as the Candy Drivers' and Salesmen's Union, which superseded the Candy Jobbers' Confectioners' Association."

The trial attorney further offered to show that the Chicago Jobbers' Confectioners' Association had voted to enter the Union.

Counsel for the defendant states that the evidence was offered "to refute the charge that your plaintiffs in error were extorting money from these different individuals;" and counsel contends that "this testimony would entirely refute the charge of extortion as laid in the indictment and would show that each of these men so approached to join the Union had through their own association, by majority, agreed to go into the Candy Drivers' and Salesmen's Union."

We think that the evidence offered was irrelevant and immaterial. The evidence does not show, and the defendant did not offer to prove, that all of the persons whom the defendant attempted to coerce into joining the Candy Drivers' and Salesmen's Union were members of the Candy Jobbers' Confectioners' Association. Furthermore, even if they had been members of the latter association, there is no evidence that they constituted a part of the majority of the members who voted to join the Candy Drivers' and Salesmen's Union. Again, if they had constituted part of the majority who so voted, it is an undisputed fact that they were solicited by the defendant to join the Candy Drivers' and Salesmen's Union, and refused to join. In this state of the evidence it is wholly immaterial how they may have voted.

We are of the opinion that the judgment of the trial court should be affirmed.

AFFIRMED.

Wachett, P. J., and McSurely, J., concur.

We think that the evidence given was inconsistent and unsatisfactory. The evidence given was not only inconsistent but also contradictory. It was not clear in many instances what the witnesses had seen or heard. The evidence was also contradictory in many respects. It was not clear from the evidence whether the witnesses had seen or heard anything at all. The evidence was also contradictory in many respects. It was not clear from the evidence whether the witnesses had seen or heard anything at all. The evidence was also contradictory in many respects. It was not clear from the evidence whether the witnesses had seen or heard anything at all.

It is really impossible for any one to read this and not be struck by the fact that the evidence is so full of contradictions. It is really impossible for any one to read this and not be struck by the fact that the evidence is so full of contradictions. It is really impossible for any one to read this and not be struck by the fact that the evidence is so full of contradictions. It is really impossible for any one to read this and not be struck by the fact that the evidence is so full of contradictions. It is really impossible for any one to read this and not be struck by the fact that the evidence is so full of contradictions.

The People of the State of Illinois, defendant in error, v.
Dan Sasson, plaintiff in error. Gen. No. 29,940.

*Prosecution for conspiracy
and judgment and
sentence thereon*

Appeal from the Municipal Court of Chicago;
Superior Court of Cook county;
County Court of county;
Hon. Judge, presiding. Heard
the Branch Appellate Court

at the term,
this court upon authority of Gen. No. 29,939.
Reversed and remanded with directions.

Rehearing denied
for appellants.

for plaintiffs in error.

for appellees.

for defendants in error.

240 I.A. 635

DELIVERED BY JUSTICE

delivered the opinion of the court.

error no. 29939 prosecuted by Joseph Glancy.

For the reasons stated in the writ of error prosecuted
by Joseph Glancy, the judgment in the present writ of error of
Dan Sasson is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

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THE UNIVERSITY OF CHICAGO
CHICAGO, ILL.
JANUARY 1, 1900
[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a letter or a report, possibly related to the University of Chicago.]

120 - 29940

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

vs.

DAN SASSON,
Plaintiff in Error.

4887 a
ERROR TO CRIMINAL COURT
OF COOK COUNTY.

240 I.A. 635

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is a writ of error prosecuted by Dan Sasson from a judgment of the Criminal court of Cook County on a verdict of a jury finding him guilty of conspiracy and fixing his punishment at imprisonment in the County jail for the term of six months. This writ of error was consolidated for hearing with the writ of error No. 29939 prosecuted by Joseph Clancy.

For the reasons stated in the writ of error prosecuted by Joseph Clancy, the judgment in the present writ of error of Dan Sasson is affirmed.

AFFIRMED.

Katchett, P. J., and McSurely, J., concur.

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THE UNITED STATES OF AMERICA

IN SENATE

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180 - 30041

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JOHN HENSEL,
Appellant,

vs.

L. F. GORMAN, MORGAN A. COLLINS,
et al.,
Appellees.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 635

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by John Hensel, the petitioner, from an order of the Superior court of Cook County, denying the right of the petitioner to a writ of mandamus against the defendants, L. F. Gorman, City Clerk, Thomas P. Keane, City Collector, Morgan A. Collins, General Superintendent of Police, William E. Dever, Mayor, and the City of Chicago, directing them to issue the transfer of the petitioner's retail beverage dealer's license for 1924 from the premises at 3334 North California avenue to the premises at 3361 Elston avenue, both avenues being thoroughfares in the city of Chicago.

The defendants have filed a motion to dismiss the appeal on the ground that the license in question has expired and that therefore the writ of mandamus would be unavailing.

We are of the opinion that the record shows a clear abuse of discretion on the part of the defendants in refusing to issue the transfer of the license in question; and that therefore the Superior court should have granted the writ. But as the license has expired we cannot direct the defendants to issue the transfer of the license since there is no license in existence.

On the authority of The People ex rel. Kochan v. City of Streator, 258 Ill. 273, we are compelled to grant the motion of the defendants to dismiss the appeal.

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Counsel for the petitioner contend that the case of People ex rel. Wolchan v. City of Streator, supra, is directly in conflict with the following Federal decisions: Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U.S. 498; Boise City Irrigation and Land Company v. Clark, 131 Fed. 413; United States v. Trans-Missouri Freight Association, 166 U. S. 290. Even if that were true, the rule announced in the case of People ex rel. Wolchan v. City of Streator, supra, is the rule of decision that must be followed by us. In cases not involving the construction of the constitution, or laws of the Union, the decisions of the United States Courts are not binding as authority on state courts. Fuller v. Shedd, 161 Ill. 462, 494; Lebanon Bank v. Mangan, 28 Pa. St. 452; Doe ex dem. Shelton v. Hamilton, 23 Miss. 496, 498.

The appeal is dismissed.

APPEAL DISMISSED.

Matchett, F. J., and McSurely, J., concur.

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271 - 30124

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PEOPLE OF THE STATE OF ILLINOIS
ex rel. John McIntyre,
Appellee,

vs.

WILLIAM E. MEYER, Mayor of the
City of Chicago, THOMAS P. KEANE,
City Collector, AL. F. GORMAN, City
Clerk, and MORGAN COLLINS, Superin-
tendent of Police of the City of
Chicago,
Appellants.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 636

MR. JUSTICE McSURNELY DELIVERED THE OPINION OF THE COURT.

Relator, John McIntyre, filed a petition asking that the writ of mandamus be issued directing the Mayor of Chicago and the other respondents to grant him a license to conduct a retail beverage business at 2644 South Wells street, Chicago. Respondents answered denying that petitioner was a person of good moral character and reputation, and setting up that on December 22, 1924, police officers found petitioner in possession of intoxicating liquor on his premises for use in connection with his business in violation of the ordinances of the City of Chicago and the statutes of the State of Illinois, and that such facts having been presented to the Mayor, petitioner's license was revoked. Upon a hearing in the Superior court the writ of mandamus was issued. From this order respondents appealed, but petitioner does not appear in this court.

It is the well established law in this state that the writ of mandamus will not issue unless the petitioner shows a clear legal right to the writ or unless the party applying for it shows a clear obligation on the part of the party against whom the writ is sought to do the thing which the petitioner seeks to have per-

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formed. It will not be awarded in a doubtful case, but only where the right of the relator is clear and undeniable and the party sought to be coerced is bound to act; also that the writ should not issue to control or review the exercise of the discretion of any state or municipal board or officer, where the act sought to be enforced is quasi-judicial in character, unless there has been a clear abuse of that discretion. It will only issue where there is an arbitrary abuse of discretion amounting to a denial of justice. Carpenter v. Dayer, Appellate Court No. 29342-3, filed February 3, 1925; People ex rel. Helt v. City, Appellate Court No. 30130, filed December 14, 1925, and cases therein cited.

The undisputed evidence is that on December 2, 1925, police officers of Chicago visited the premises in question and found four customers at the bar and glasses on the bar of the kind used for a "wash" for whiskey; that as the officers came in the front door petitioner started to pour something into the sink from a bottle; that one of the officers smelled the bottle, which smelled like whiskey; that petitioner then ran through a side door and started to go upstairs; that the officer then compelled petitioner to open up a closet under the stairs and found two bottles, one of Port wine and the other of whiskey.

Under these circumstances, we are of the opinion that there was no abuse of discretion on the part of respondents in revoking petitioner's license on the ground that he had liquor on the premises in violation of the city ordinances and the state statutes. The writ of mandamus should not have been awarded, and the judgment of the Superior court is reversed.

REVERSED.

Katchett, P. J., and Johnston, J., concur.

280 - 30133

PEOPLE ex rel. DANIEL LA BLANG,
Appellee,

vs.

WILLIAM E. DEVER et al.,
Appellants.

4890a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 636

MR. JUSTICE MESURRY DELIVERED THE OPINION OF THE COURT.

Relator, LaBlang, filed his petition asking that the writ of mandamus issue against respondents ordering them to give him a license to conduct a public place of amusement at the premises known as 6346 Broadway, Chicago, Illinois, popularly known as the "Northern Lights Cafe." Answer was filed setting forth certain facts and averring that the revocation of petitioner's license was lawful and within the discretion of the officer charged with the issuance and revocation of licenses. Upon a hearing in the Superior court the writ of mandamus was ordered to issue, from which respondents appeal. Relator does not appear in this court.

It is the well settled law in this state that the writ of mandamus will not issue unless the petitioner shows a clear legal right to the writ or unless the party applying for it shows a clear obligation on the part of the party against whom the writ is sought to do the thing which the petitioner seeks to have performed. It will not be awarded in a doubtful case, but only where the right of the relator is clear and undeniable and the party sought to be coerced is bound to act; also that the writ should not issue to control or review the exercise of the discretion of any state or municipal board or officer, where the act sought to be enforced is quasi-judicial in character, unless there has been a clear abuse of that discretion. It will only issue where there is an

REV. A. H. HARRIS

CHURCH OF THE HOLY TRINITY,
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arbitrary abuse of discretion amounting to a denial of justice. Carpenter v. Beyer, Appellate Court No. 29342-3, filed February 3, 1925; People ex rel. Heit v. City, Appellate Court No. 30130, filed December 14, 1925, and cases therein cited.

In appellants' brief the undisputed facts are stated that the Northern Lights Cafe was so conducted as to constitute a public nuisance and in violation of a number of ordinances of the City; that a "jazz" band, singing, and other noises were continued in the cafe until one or two o'clock in the morning, and frequently until four or five o'clock in the morning, disturbing the neighborhood and the tenants living in the nearby apartment houses; that the surrounding neighborhood is residential and that Loyola University is nearby; that women entertainers go around in the cafe from table to table, in violation of the city ordinance, and dance in unbecoming manner; that they were seen in acts of familiarity with the men; and that drinking from hip flasks was indulged in. It further appeared that on August 27, 1924, at about 2:15 o'clock in the morning, one of the entertainers was insulted and knocked down by one of the patrons, who was one of a number of gunmen headed by Louis Alterie; that there was a police officer, in citizens' clothes and unarmed, in the cafe that night, and when he remonstrated with the man who attacked the girl, the officer was struck and thrown out on the street; that when the police arrived there was a general shooting scene, in which one of Alterie's men was killed and one of the officers wounded by a shot. It was also shown that the premises had been closed for about a year by Federal court order, for selling intoxicating liquor; likewise that letters had been written by surrounding residents and the president of a business association to the Mayor, calling attention to the disreputable character of the cafe and asking that it be closed.

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It was incumbent upon petitioner, in order to be entitled to the license, to prove that he was a person of good moral character. Section 206, Chicago Municipal Code. No evidence was introduced tending to show this, and no character witness of any sort testified at the hearing.

Under the undisputed facts there was no abuse of discretion on the part of respondents in revoking petitioner's license. The writ of mandamus should not have been awarded, and the judgment of the Superior court is reversed.

REVERSED.

Hatchett, P. J., and Johnston, J., concur.

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330 - 30183

K. SCHREIBER, Doing Business
as Federal Lamp Works,
Appellee,

vs.

THE FAIRPLAY CO., a Corporation,
Appellant.

4891a
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 636

MR. JUSTICE McNEELY DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit to recover on account of defendant's alleged breach of contract in failing to accept and pay for goods ordered from plaintiff and also for goods, wares and merchandise sold and delivered for which defendant had not paid. Upon trial the jury found for plaintiff, who had judgment for \$900.

Defendant, appealing, asserts that plaintiff commenced her action as a fourth class case in the Municipal court and subsequently by filing an amended statement of claim increased the amount claimed to over \$1,000, and the case proceeded to trial as a first class case. For the court to transfer the case from a fourth class to a first class case is said to be reversible error. Holmes v. Straus, 283 Ill. 621. Plaintiff replies that there was no transference from one class to another; that regardless of the items of damage set forth in the amended statement of claim the ad damnum was never changed and that it was a fourth class case from start to finish and so tried without objection by defendant.

Upon referring to the abstract to ascertain the facts, we find nothing therein to support the contention that the case was transferred from the fourth class to the first class. The abstract does not tell us the class of the case, nor what the ad damnum was of the original or amended statement of claim. Under such circumstances, we will assume that the case was commenced and proceeded

to judgment in the proper class. The abstract must show matters relied on for reversal. Reviewing courts will not examine the record to find grounds for reversing. Kieszkowski v. Eastrom, 179 Ill. App. 73; Shreffler v. Fuller, 208 Ill. App. 630; Barber Central v. Helliok-Hayward Co., 208 Ill. App. 299; Detarding v. Illinois Public Service Co., 223 Ill. App. 374.

Plaintiff is in the business of manufacturing electric lamps, including small lamps for Christmas trees. In October, 1922, defendant gave plaintiff written orders for approximately 23,000 Christmas tree lamps. A considerable number of the lamps was delivered, but defendant alleges that on testing they were found to be so defective that it could not sell them to its Christmas trade, and thereupon it refused to accept any further deliveries and claims that to fill its Christmas orders it was compelled to go into the market and buy other lamps at a higher price.

Plaintiff introduced evidence tending to show that the lamps were not defective, but were of the kind usually manufactured and sold for this particular purpose; that in unpacking defendant mixed lamps of six volts with those of fourteen volts and tested them together, which was improper, as naturally the lamps of lower voltage would receive too much current and burn out. Plaintiff states that the lamps delivered were tested in her plant before shipment and worked properly. The evidence of plaintiff further tended to show that the lamps delivered were of clear glass and that defendant colored some of these; that the base of the lamps is made of composition soluble in alcohol; and that in coloring the lamps alcohol is used, which, if it comes in contact with the base, will naturally soften same. What are claimed to be fair samples of the lamps were introduced by plaintiff in evidence and are attached to the record before us as

[illegible]

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that in answer to the question of the "New York Times" as to whether the Government was going to "take any action" to "prevent the spread of the disease," the answer was "No, we are not going to take any action."

exhibits.

The testimony of the witnesses is in direct conflict on many vital points. For instance, one witness for the plaintiff testified that she had a conversation with a representative of the defendant, who said that defendant was having difficulty in coloring the lamps and that it could buy lamps already colored from other sources for less than the cost of plaintiff's lamps. Defendant's representative denied that such a conversation occurred.

Whether the goods delivered reasonably complied with the contract of purchase and whether defendant was justified in refusing to accept the balance of the order was peculiarly for the jury to determine. Various points are presented which tend to discredit the probabilities of plaintiff's version, and this also can be said of defendant's evidence. In this uncertainty we must give weight to the opportunity of the jury to judge of the credibility of the witnesses by seeing them and observing their appearance and demeanor while testifying. Whatever might have been our opinion as jurors, as a reviewing court we can only reverse on the facts when we are of the opinion that the verdict is manifestly against the preponderance of the evidence. After considering the variant stories of the witnesses, we cannot say that the conclusion of the jury as to the facts was so clearly wrong that the judgment cannot stand.

Complaint is made with reference to the rulings of the court on the instructions. The instructions to the jury were oral, and they must be taken as a whole. Considering the instructions in this way, we are of the opinion that, while certain parts might be objectionable, yet taken altogether they contained no prejudicial error requiring a reversal.

The important question in the case is one of fact. The jury has decided against the defendant, and we are not

warranted in setting aside this conclusion.

The judgment is affirmed.

AFFIRMED.

Matchett, P. J., and Johnston, J., concur.

and the following are the first three terms of the expansion:

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1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 26

39 - 30281

DAVID HAAS,

Appellee.

vs.

JOHN P. CRACRAFT and ROSE
CRACRAFT, Doing Business as
John P. Cracraft & Co.,
Appellants.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 636

MR. JUSTICE McSURELY DELIVERED THE OPINION OF THE COURT.

Plaintiff and defendants are real estate brokers. Plaintiff was an employee of defendants and claims that under his contract of employment he was entitled to fifty per cent of \$1575, which was commissions paid to defendants on the sale of certain real estate in Chicago. There have been two trials, in both of which the findings have been against the defendants. Plaintiff has received \$157.50 and now has judgment for \$630, the balance claimed by him.

The contract under which plaintiff was employed by defendants was verbal. He says he was to receive what was called a listing commission of ten per cent on any sale of property listed by him with defendants' office; if a sale was made by him he was to receive fifty per cent. In their affidavit of merits defendants denied that plaintiff was to receive fifty per cent commission on any deal consummated through his efforts unless it was with their knowledge and consent. Rose Cracraft, a defendant, testified that plaintiff was to receive fifty per cent on any customer he brought to the house to whom a sale was made, or fifty per cent "on any customer we turned over to him to work upon." John Cracraft, the other defendant, testified that plaintiff was to receive fifty per cent of the commission defendants received on sales plaintiff made to customers he originated "or customers

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Be sure the staff is well-trained and well-organized to handle

The author will be a contributor of this journal's new series, *Reviews*.

11. *What are the two main types of water treatment?*

NOTE: All other 1997 findings have been omitted for brevity.

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THE BOSTON GLOBE, SATURDAY, JANUARY 10, 1896.

1. The first step is to identify the variables that are relevant to the problem. In this case, the variables are the number of hours worked per week and the number of hours spent on the project.

Information on the use of the system is available at <http://www.irs.gov/efile>.

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Journal of Management Education 30(6)p.789-804

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There are still many of the Victorian ideal behind a Victorian

11. Has the State of Tennessee ever been a party to a treaty with a foreign nation?

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and the α value was 0.05. A p value of ≤ 0.05 was considered as significant.

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of the house that we turned over to him to sell."

Considering these slightly variant statements and construing the affidavit of defense as an admission that plaintiff was to receive fifty per cent of any commissions on a deal consummated through his efforts, defendants having knowledge of and consenting to the deal, the trial court was justified in holding in accordance with plaintiff's version.

Plaintiff had met a Mr. and Mrs. Christian, who were at several offices looking for desirable property with a view to purchasing the same. He also met them at defendants' offices shortly after he became employed there. Mrs. Christian came into the office and informed Mrs. Cracraft that they had found a piece of property they wanted and gave her the location. Mrs. Cracraft made some inquiries and later informed Mrs. Christian that the property was not for sale and could not be purchased. Afterwards plaintiff got in touch with the owner of this property and succeeded in bringing the owner's agent and Mrs. Christian together. Plaintiff reported this to Mrs. Cracraft. The owner and the Christians came to an agreement and a contract was executed which was consummated by the sale of the property to the Christians for \$105,000.

There is no dispute as to these facts. Defendants made no attempt to secure this property for the Christians, but informed them that it was not for sale. It was due to the subsequent efforts of the plaintiff that the sale was made, and as it was made with the knowledge and consent of the defendants, plaintiff would be entitled to fifty per cent even under the admission in the affidavit of defense.

Upon the trial defendants sought to prove that at the time the deal was closed a dispute arose between them and the plaintiff about the division between them of the commission; that

*. This is not a true test of the model, as it is not possible to test the model with a single data point.

See ["Sovereigns' Rights to Exploit Natural Resources"](#)

THIRTEEN THE SUBJECT IS A WOMAN IN JAIL IN THE NEW YORK STATE PRISON
-SHE IS A MARRIED WOMAN AND IS THE MOTHER OF TWO CHILDREN

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www.oxfordjournals.org/doi/10.1093/oxfordjournals/.../...

Journal of Management Education 30(6) 789-804

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the other was informed that the company had been a great success in the past and that it was now in a position to expand its operations.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first group of people who were involved in the development of the program were the students of the University of California, Berkeley, who were interested in the study of the history of the United States.

Information on the location of the property is not available.

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and the next morning I was surprised to find a letter from the

plaintiff was claiming a listing commission of ten per cent of \$315, on the total commission paid, \$3150, which was divided equally among the defendants and the brokers for the seller, while Mr. Graecraft claimed that plaintiff was entitled to only ten per cent of the amount received by defendants, or \$157.50; that it was finally agreed that defendants would give plaintiff \$157.50, which was done, and put up the balance of his claim, or \$157.50, in escrow. Plaintiff denies that such an agreement was made. He admits the dispute and says that this was finally ended by his taking \$157.50, the balance of his claim to be settled subsequently either by suit or otherwise. Mellon, the agent for the seller, a disinterested witness, says that there was so much talk about the commission that he was not clear as to what amount, if any, was agreed upon. There is conflict in the testimony of the witnesses. The trial court, however, had the opportunity, which we have not, of seeing and observing them while testifying and was better able to pass upon their credibility than are we. We cannot say that its conclusion to accept plaintiff's story of this occurrence is so clearly wrong as to justify a reversal.

Complaint is made of the rulings of the court upon the evidence, but since the case was tried without a jury, errors in this regard, if any, are not sufficiently prejudicial to change the result.

The outstanding feature, which evidently commended itself to the trial court, was that after defendants would not proceed in helping the Christians to obtain the property they wanted, plaintiff on his own initiative became active and by his efforts and diligence brought them and the owner together so that the sale was consummated.

This case should not be tried a third time, and as the judgment is proper it is affirmed.

AFFIRMED.

Matchett, P. J., and Johnston, J., concur.

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

vs.

JACK O'MARA,
Plaintiff in Error.

ERROR TO MUNICIPAL COURT
OF CHICAGO.

240 I.A. 636

MR. JUSTICE McSHERRY DELIVERED THE OPINION OF THE COURT.

An information was filed charging defendant with cutting and damaging a certain automobile. He pleaded not guilty. Upon trial by the court he was found guilty and sentenced to three months imprisonment in the House of Correction and fined one dollar and costs. From this judgment he appeals. The sufficiency of the information is questioned. This is as follows:

"Harry L. Cagney, a resident of the City of Chicago, in his own proper person, comes now here into court and in the name and by the authority of The People of the State of Illinois, gives the Court to be informed and understand that Jack O'Mara heretofore, on to-wit, the 15th day of February, A. D. 1925, at the City of Chicago, aforesaid, did then and there with felonious intent cut destroy and damage a certain automobile, the property of said Harry L. Cagney, in violation of Paragraph 432, Section 1, Chapter 38, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of The People of the State of Illinois."

Defendant says that this does not set forth specifically the crime charged, for the reason that Paragraph 432, Section 1 of Chapter 38, is concerned with malicious handling of lumber rafts, scows or boats. The State replies that this is a mere unimportant error, that the correct paragraph number is 439, and the number of the paragraph is mere surplusage.

A misstatement of a section of the statute may be considered as mere surplusage. Snell v. People, 29 Ill. App. 470. A mis-recital of a statute may be rejected as surplusage where the conclusion is "contrary to the form of the statute in such

THE UNITED STATES OF AMERICA

§ 401 A. 330

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

DEPT. OF JUSTICE
WASHINGTON, D. C.

RE: JOURNAL OF THE PROCEEDINGS OF THE SENATE

IN SENATE, FEBRUARY 2, 1900

and the Senate on the 2d of February, 1900, the following resolution was adopted: That the Senate do pass the bill for the relief of the said John A. ...

REPORT OF THE SENATE COMMITTEE ON THE JOURNAL OF THE SENATE, FEBRUARY 2, 1900. The committee on the Journal of the Senate, created by the Senate on the 2d of February, 1900, has the honor to report to the Senate the following: ...

THE SENATE COMMITTEE ON THE JOURNAL OF THE SENATE, FEBRUARY 2, 1900. The committee on the Journal of the Senate, created by the Senate on the 2d of February, 1900, has the honor to report to the Senate the following: ...

A resolution of the Senate, passed on the 2d of February, 1900, is hereby reported to the Senate by the Senate Committee on the Journal of the Senate, created by the Senate on the 2d of February, 1900, has the honor to report to the Senate the following: ...

case made and provided." 22 Cyc p. 370. It has been repeatedly held that, where the information or indictment substantially follows the language of the statute creating the offense charged, it is sufficiently certain. Fuller v. People, 92 Ill. 182.

Counsel for both parties assume that Paragraph 432, Chapter 38, is the wrong paragraph number and that the correct number is 439, and yet, upon referring to the Revised Statutes of 1925, compiled by Cahill, we find the paragraph in question is 432, which is the number given in the information. The drawer of the information evidently used the compilation of statutes by Cahill, while the attorneys briefing the case here have used the one by Smith-Murd, which has different paragraph numbers. This illustrates the absurdity of holding that the paragraph number is an essential part of the information; otherwise a defendant could escape judgment by merely presenting some other compilation of statutes than the one referred to in the information. As there are several compilations, the avoidance of punishment would thus be easy.

It is conceded that the Municipal court had no jurisdiction to try felonies, but the use of the word "felonious" in the information does not make the crime a felony, and this word was surplusage.

The points made in the brief against the information are without merit, and as no other grounds are urged for reversal, the judgment is affirmed.

AFFIRMED.

Matchett, F. J., and Johnston, J., concur.

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FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,

Defendants.

ON APPEAL OF ROSE HARRIS,
Appellant.

48 94a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 637

MR. PRESIDING JUSTICE BARNES

DELIVERED THE OPINION OF THE COURT.

In this case a preliminary injunction was issued March 7, 1924, as prayed for in the bill of complaint, restraining and enjoining defendants to the bill, their several officers, agents, representatives and members, and associations, persons, etc., from assisting, aiding, confederating or conspiring with them, and having knowledge of said injunction from (1) "picketing or maintaining any picket or pickets at or near any of the buildings in which complainants, respectively, operate their businesses or along the routes used by persons in going to or coming from any of the places of business of the complainants, respectively" * * *; (2) "from watching, following, stopping, assaulting, beating, threatening, menacing, intimidating, harassing, molesting or interfering with any of complainants' employes" * * *; (3) from doing certain specific acts such as calling on or talking to any of said employes against their manifest will, or (4) addressing or applying to them profane, insulting and humiliating or obscene epithets, names, terms or language; (5) from soliciting or inducing them to quit their employment; (6) from molesting or interfering with any property of complainants or of their employes; (7) from threatening, participating or assisting in the doing of any of the things

specifically forbidden by the injunction.

As appears from the bill and affidavits supporting the injunction complainants were engaged in the business of the manufacture and sale of ladies garments and conducted what is known as open shops and employed persons irrespective of the fact whether they belonged to a union or not, and the defendants sought to engage in a campaign to compel them to conduct and operate union or closed shops, which complainants refused to do, and thereupon defendants entered into a conspiracy to call, and did call, a general strike of all employees engaged in the manufacture of ladies garments in Chicago, and to make the same effective caused complainants' places of business to be picketed by groups of persons.

This proceeding and other similar proceedings that are consolidated therewith for hearing in this court were inaugurated by filing various affidavits in the cause charging various persons with the violation of said injunction by picketing the premises of complainants or some of them and doing other acts in wilful disregard of said injunction. Writs of attachment were issued on March 22, 1924, to bring six of the respondents to said proceedings before the court for contempt, and on March 24, 1924, a rule was entered upon the other respondents, including appellant Rose Harris, to show cause why they and each of them should not be adjudged in contempt for violating said injunction.

After a hearing had in said proceedings, at which both oral and documentary evidence was introduced, and respondents were present represented by counsel who cross examined the witness, the court, on April 5, 1924, entered orders holding the several respondents in contempt of court for violating said injunction and imposed upon each of them a fine, and against some of them punishment by imprisonment in jail. The fines in the 23 cases ranged from \$25 to \$150, and the terms of imprisonment from 10 to 30 days.

Specialized Investigation of the Laboratory

As appears from the list and exhibits accompanying the
investigation committee were engaged in the business of the
business and also of labor committee and conducted work in
known as such ways and employed persons interested in the fact
whether they belonged to a union or not, and the following reasons
to appear in a complaint to certain that in manner and spirit union
or closed shop, which committee refused to do, and therefore
reference was made to a committee in 1911, and the result
general strike of all employees engaged in the business of the
business in Chicago, and to have the same effective result was
planned, since of business to be placed in power of business.
This proceeding and other similar proceedings that are
conducted towards the laboring in this party were conducted
by filing various affidavits for the laboring parties before
with the violation of law in violation of the provisions of
regulation as well as the law and other laws in which dis-
regard of said regulation. Some of affidavits were issued in
March 22, 1911, to which all of the respondents in said proceedings
before the court the complaint, and on March 24, 1911, a writ was
entered upon the laboring parties, including upon those who had
in their power the law and other laws and not be engaged
in business for violation of law.
After a hearing had in said proceedings, it was held
that the respondents were not engaged, and respondents were
respondents were not engaged who were engaged the others, the
court on April 11, 1911, entered an order against the several respondents
who in violation of law for violation and injunction and refused
upon each of them a fine, and against some of them imprisonment by
imprisonment in jail. The order in the case against the 1911
in 1911, and the order of imprisonment from 10 to 30 days.

Each party has appealed from the order adjudging him or her to be in contempt, and the several appeals, 33 in number, have been consolidated for hearing in this court. The same points for reversal are urged in each case, viz: (1) the insufficiency of the affidavits upon which said order of attachment and rule to show cause were issued; (2) insufficiency of the evidence; (3) that the several fines imposed are excessive and disproportionate to the offenses proven.

Bearing upon the first point it is admitted that the several cases are purely remedial in character and constitute civil contempts. (Hake v. People, 230 Ill. 174; Rothschild & Co. v. Steger & Sons Piano Mfg. Co. et al., 256 Ill. 196.) Being such the proceedings were properly inaugurated by affidavits filed in the chancery cause; and if they stated facts tending to prove the guilt of respondents they were sufficient to bring to the attention of the court the claim that the injunction had been violated. (Flannery v. People, 225 Ill. 62, 69.) Each of the affidavits states specifically that respondents with full knowledge of the issuance of the injunction, thereafter picketed in front of the business places of complainants. If this charge was true that alone was sufficient, regardless of any other alleged violation of the injunction, to warrant the attachments and rules in that cause. As, however, the point was not raised in any shape or form in the court below it is not properly open for consideration and none of the respondents is in a position to complain even if the affidavits were insufficient. But the point is sufficiently answered by the rulings of the Supreme Court in Hake v. People, 230 Ill. 174; Rothschild & Co. v. Steger & Sons Piano Mfg. Co., et al., 256 Ill. 196; O'Brien v. People, 216 Ill. 354; and Flannery v. People, 225 Ill. 62, 69, where the court passed on the sufficiency of similar affidavits in like cases.

As to the second point: While counsel has set forth the

evidence in substance in his statement of facts he has not argued in what respect it is insufficient in any of the cases. From the evidence presented it appears that each of the respondents had notice or knowledge of the injunction, and notwithstanding such notice or knowledge deliberately violated its terms by picketing in front of places of business of one or more of the complainants for several days after the issuance of the injunction and some of them, in fact, after they were attached, and that each and all were manifestly parties to the conspiracy to carry on such picketing in open defiance of the court's order against it. Several of the respondents, including appellant, were also guilty of violating the specific terms of the injunction in other respects, either by acts of intimidation, threats of physical violence, assault, or the use of vile epithets against the employees of one or more of the complainants. It is unnecessary to review the evidence of them, for no respondent except one, namely, Mamie Kunz, took the witness stand or introduced any testimony whatever in denial of the charges made and proven. These main facts stand out in each of the cases: A strike was called by said defendant unions or locals against each of the complainants who were all engaged in the same line of business. Pursuant to that strike there was concerted and confederated action to prevent the employees of said complainants from working for them unless they unionized their shops; and pursuant to the conspiracy each of the respondents patrolled and picketed in front of complainants' places of business and intercepted or followed their employees going to or coming from their places of work, threatening and intimidating them in one way or another with full knowledge of the issuance of the injunction forbidding such acts. There is no denial of these facts nor any attempt to justify them. While counsel's brief states abstract propositions of law relating to contempt proceedings he does not attempt in the brief filed herein to argue or apply them to the facts in this case. We do not

think the sufficiency of the evidence is open to any argument.

Counsel's argument is confined mainly to the third point, the alleged excessiveness and disproportionateness of the penalties imposed. The acts of some of the respondents were more aggravated or contumacious than those of others and the court manifestly recognized that fact in the imposition of different penalties. But there is nothing either in the amount of the fines or the duration of imprisonment fixed in any case which of itself indicates an abuse of the court's discretion in the matter of fixing punishment. In fact, counsel presents no particular test for a holding to the contrary except his private opinion, in which we do not concur. The same point was made in Hake v. People, supra, where it was said the court had a large discretion in the matter and might even in a case of civil or remedial contempt fix a definite period of imprisonment, either with or without a fine, and that courts of appellate jurisdiction were averse to interfering with the exercise of such discretion. (p. 196.) It is only where there is an abuse of the court's discretion that an appellate tribunal will interfere with its exercise. No abuse of it is manifest in this case or the several cases consolidated with it.

The fines were not excessive and punishment by imprisonment seems to have been imposed only in the cases where the evidence disclosed a defiant and contumacious disregard of the court's order accompanied either by numerous or persistent efforts to defeat it, or flagrant conduct in addressing threats and vile epithets to employees of some of the complainants or by assaulting or otherwise intimidating them.

Inasmuch as there was no serious controversy of fact, and no respondent except one took the witness stand or offered any evidence to contradict the proven charges it seems unnecessary to state the facts of each particular case. Six of the respondents

pleaded guilty, and the others, (except Mamie Kunz) including Rose Harris, by their silence practically admitted their guilt. The proof being conclusive that each of them participated in the picketing after receiving notice or personal service of the injunction, under circumstances indicating an utter disregard for the court's authority, some of them even verbally expressing themselves to that effect, and several of them, including Rose Harris, having followed employes and intimidated them by threats of violence, vile epithets and assault, it is enough to say that upon a review of the facts pertaining to each case we think the punishment in each case might be characterized as moderate rather than excessive, and none disproportionate to the offense proven.

No good or legal reason for a reversal of the judgment is shown. The court's jurisdiction was not questioned, the facts were not controverted, the evidence of violation of the injunction by each respondent was clear and undenied, and practically the only thing for the court to determine was the degree of punishment to be imposed, which varied as aforesaid according to the facts of the case. The punishment in the case of Rose Harris was a fine of \$125 and imprisonment in the county jail for 10 days. It was none too severe for her flagrant, contumacious and contemptuous violation of the court's order.

And the same may be said with respect to the other cases the facts pertaining to which all appear in one bill of exceptions. In view of the recognized fact that the several cases involve the same principles and to a certain extent the same state of facts, at least so far as the charge of picketing is concerned, of which all are confessedly guilty, and that the cases vary only with respect to the particular conduct and degree of turpitude of the several respondents, it seems unnecessary that we should say more in this case, or do more than render a formal opinion adopting this as controlling in each of the other cases.

AFFIRMED.

Gridley and Fitch, JJ., concur.

38 - 29675

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 637

On the Appeal of MARGARET WELCH,
Appellant.

MR. PRESIDING JUSTICE BARNES
DELIVERED THE OPINION OF THE COURT.

Consolidated for hearing with this appeal of Margaret Welch are the appeals of twelve other respondents to contempt proceedings in the above entitled cause, each of which was adjudged to be in contempt for violating a preliminary injunction issued in said cause on March 7, 1924. Some of the respondents were fined, and some fined and sentenced to imprisonment in the county jail. The fines ranged from \$100 to \$200. Two of the respondents were also sentenced to imprisonment, Marion Brostek for 10 days and Louis Sokoloff for 50 days.

The injunction restrains the defendants to the cause, their officers, agents, etc., and members of said union and locals, and all persons, etc., assisting, aiding, confederating or conspiring with them and having knowledge of the injunction from picketing at or near any of the buildings in which complainants, respectively, operate their businesses or along the routes used in going thereto or therefrom, and from following, stopping, assaulting, beating, threatening, menacing, intimidating, harassing, molesting or interfering with anyone employed by any of said complainants; from addressing or applying to any of them any profane, insulting,

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1. The first of the two main parts of the book is devoted to the study of the history of the English language. It begins with a chapter on the prehistoric period, which deals with the languages spoken in Britain before the arrival of the Romans. This is followed by a chapter on the Old English period, which covers the years from the fifth to the eleventh century. The third chapter deals with the Middle English period, which spans the years from the twelfth to the fifteenth century. The fourth chapter covers the Modern English period, which begins in the sixteenth century and continues to the present day. The second main part of the book is devoted to the study of the structure of the English language. It begins with a chapter on the phonology of English, which deals with the sounds of the language. This is followed by a chapter on the morphology of English, which deals with the structure of words. The third chapter deals with the syntax of English, which deals with the structure of sentences. The fourth chapter covers the semantics of English, which deals with the meaning of words and sentences.

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The following information is contained in the files of the Bureau of the Census, Department of Commerce, and is being furnished to you for your information. It is not to be used for any other purpose than that for which it was furnished.

humiliating or obscene epithet, name, term or language; from soliciting any of them to quit such employment; from injuring or interfering with any property used by any of the complainants or any of their employees, and from threatening, participating or assisting in the doing of any of the things forbidden by the injunction.

The contempt proceedings were inaugurated by three separate orders for rules to show cause entered March 16, 1924, upon affidavits filed in the cause, one against five of said appellants, one against five other appellants, one against two of them, and an attachment against appellant Ida Salzkoff, all based upon affidavits specifically charging each of them with knowledge of the injunction by service of a copy thereof or otherwise, and with picketing in violation of its terms, and with the commission of other acts expressly forbidden by the injunction. The cases were heard March 25, 1924, upon said affidavits, answers of such appellants as made answer in writing, and oral and documentary evidence. All of the defendants were before the court represented by counsel who participated in the examination of witnesses against each of them, and in presenting evidence in their behalf. After such hearings the several sentences referred to were imposed.

During the same month contempt proceedings were had in said cause of action against various other respondents who were also sentenced for contempt, some of whose appeals were consolidated for hearing in the case of the appeal of Rose Harris, Gen. No. 23673, in which we have this day filed an opinion. Much we said therein is applicable to this case and the cases consolidated therewith. The arguments in all of the cases rest on practically the same grounds for reversal, namely, (1) the insufficiency of the affidavits on which the rule to show cause were entered; (2) the insufficiency of the evidence, and (3) that the sentences are excessive as to the amount of the fine, and cruel and unusual. An

additional ground urged in the cases of Sokoloff and Brostek is that the orders of commitment being entered in a case of civil or remedial contempt are unconditional.

We said in the Rose Harris case that none of the appellants in that case was in a position to complain of the insufficiency of the affidavits as the point was raised in this court for the first time, their sufficiency not having been questioned in the court below, and each respondent having been represented by counsel and given ample opportunity to defend the charges against him. The same state of facts exists in these cases, some of appellants taking issue by written answer to the rule, and all going to a hearing on the merits of the charges without questioning the sufficiency of the proceedings in any respect. What we said on this point in the Rose Harris case, referring particularly to Make v. People, 230 Ill. 174; Rothschild & Co. v. Steger & Sons Piano Mfg. Co. et al., 256 Ill. 196; Flannery v. People, 225 Ill. 62, and O'Brien v. People, 216 Ill. 364, is equally applicable to the records before us. The specific contention that the affidavits presented no issue that respondents could meet by admission or denial is without force, for the bill charged defendants with calling and inaugurating a strike to compel complainants to conduct and operate union or closed shops, and entering into an unlawful conspiracy to effect that object, and the affidavits upon which the rules were issued set forth the picketing and patrolling in front of the premises of the complainants or some of them subsequent to the issuance of the injunction, the service of the injunction upon, or notice thereof to the persons so picketing, and refusal of most of them to accept it, their expressions of defiance and contempt for the order of the court, their refusal to give their names, their continued participation in acts forbidden by the injunction, the arrest of pickets who when released resumed picketing again in a

short time, the arrest of several, four, five, and six times in the course of the strike, and that they abused and continued to molest and harass complainants and their employes. Not only were these issuable facts pertinent to the inquiry thus set forth, they were such as to show that each respondent was a party to the conspiracy charged to exist in the bill. It is fundamental that what one does to effect a conspiracy is chargeable to all others participating therein, and hence anyone alleged to be in the conspiracy was subject to such rule or attachment. All thus brought into court submitted themselves to its jurisdiction and by answering or offering testimony in defense, or both, went to hearing upon the issues presented on the charge of violating the injunction. They cannot, therefore, at this time question the sufficiency of the pleadings by which the issues were presented, even if defective, there being sufficient basis in the facts above stated to warrant a hearing thereon, where no specific objection was interposed.

The point made as to excessive punishment, either as to the amount of fine or duration of imprisonment, or both, has been fully answered in what we said respecting the same contention made in the case of Rose Harris, supra. In the cases cited above the same point was considered by the Supreme Court wherein it was held that the court had a large discretion in the matter of imposing punishment for civil or remedial contempt, and that courts of appellate jurisdiction were averse to interfering with the exercise of such discretion. We have reviewed the evidence in these several cases and find nothing to suggest abuse of such discretion.

As to the claim of the insufficiency of the evidence to establish the guilt of respondents it would seem to be enough to say that while the facts were controverted in some of the cases, the sufficiency of the evidence in those cases depended mostly on the credibility of the witnesses, which the Chancellor could better

determine than we. Without detailing the evidence, the summary of which is above stated, we think it fully justified the court in finding that each and all of them were active participants in effecting the object of said conspiracy and to that end engaged in picketing and in the commission of some other specific act or acts of intimidation prohibited by the injunction after they had been served with a copy of the same or otherwise acquired knowledge thereof, and proof was adduced of specific acts of an aggravated or contumacious nature which doubtless influenced the court in inflicting a greater punishment on some than on others, all of which was within the sound discretion lodged in the court. (See the cases herein cited.)

We fail to perceive the relevancy of the remaining point, which counsel has not argued, that the order of commitment in the cases of Sokoloff and Marion Brestek was unconditional, inasmuch as by the terms of the order in each case the respondent was ordered imprisoned for a specified time unless sooner discharged by law.

We see no reason for not affirming the order in each case. The facts in the cases of the several respondents vary but little, mostly with respect to the degree of contumacy and defiance shown to the court's orders.

AFFIRMED.

Gridley and Fitch, JJ., concur.

19 - 29605

ROTH-BORSEY COMPANY,
a corporation,
Appellee.

v.

CHICAGO JOINT BOARD et al.,
Defendants.

ON APPEAL OF ELEANOR SADLOWSKI,
Appellant.

APPEAL FROM
CIRCUIT COURT,
COOK COUNTY.

240 I.A. 637

MR. JUSTICE VITCH DELIVERED THE OPINION OF THE COURT.

This appeal is from an order of the Circuit court adjudging appellant, Eleanor Sadlowski, guilty of contempt in violating an injunction, by the terms of which the defendants were restrained from picketing or maintaining pickets at or near the premises of complainant, or from congregating in front of the same in furtherance of such picketing, from attempting, by threats, intimidation or force, to induce employees of that company to leave its employment, from assaulting, or threatening, or intimidating such employees in going to or from complainant's premises, from intercepting, following, or talking to any of such employees against the manifest will of the latter, from calling any of such employees "scabs," and from advising, encouraging or assisting in the doing of any of such acts. The order appealed from was entered in the cause in which such injunction was issued, and was based upon a verified petition filed therein, against appellant, and May Hencynski and Catherine Koppa, as respondents, which charges that with full knowledge of the injunction, the respondents wilfully violated it by unlawfully engaging in

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THE UNIVERSITY OF CHICAGO PRESS

*THRUOUT 2000 THE UNIVERSITY OF MARYLAND SYSTEM WILL BE RECEIVING *FUND*

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, under the authority of the President, and who have taken the oath of office and qualification:

picketing in front of complainant's place of business and intercepting and following complainant's employees and calling them "scabs," specifying the particulars of two instances of the latter sort, all to the injury and prejudice of the rights and property interests of the complainant, as well as in defiance of the order of the court. Upon this petition, a rule was entered on the respondents to show cause why they should not be attached and punished for contempt. Respondents appeared and answered the petition, and the matter was set for hearing at a later day, at which time, by agreement, it was heard with another petition of the same character and containing substantially the same charges, against one Max Nevak. A number of affidavits were filed and considerable oral testimony was taken. At the conclusion of the hearing, the court found all four of the respondents guilty of contempt, and entered an order committing the respondent Nevak to jail for twenty days, and the other respondents for ten days each, from which order each of the respondents has severally perfected an appeal. By agreement in this court, the four appeals have been consolidated for hearing and have been heard upon the record, abstracts and briefs filed in this case.

Respondent's counsel contend, first, that the petitions are "insufficient to sustain a decree;" second, that the court admitted improper evidence; third, that the competent evidence does not justify the findings; and fourth, that the punishment is excessive.

It is conceded by counsel that the proceedings in question are for civil, as distinguished from criminal, contempts. In Make v. The People, 230 Ill. 174, the court had occasion to state the rules of procedure which apply to cases of this character. It held that such proceedings may be commenced by petition or affidavit filed in the court in which the injunction was issued,

and whether commenced by petition or affidavit, "the alleged contempt need not be set out in the petition or affidavit with the same particularity as is required in a criminal information or indictment;" that on the hearing of an alleged civil contempt, the court is not confined to the respondent's sworn answer, but "may hear affidavits, or any other proper testimony, to enable the court to determine the truth of the matter according to justice and equity;" and that such a proceeding, from the beginning to the end, is "in all of its procedure, essentially a civil chancery proceeding, conforming itself, in its pleadings, character and quantity of proof required, and in its course through the appellate tribunals, to the rules and practice applicable to other chancery proceedings."

In O'Brien v. The People, 216 Ill. 354, it was also held, in effect, that if the court can see from the petition and affidavits filed that the respondents had notice of the charge against them and a reasonable opportunity to intelligently prepare their defense, that will be sufficient. This was followed in Flannery v. The People, 225 Ill. 62, where it was said (p. 68): "It is sufficient if, either by petition or sworn statements, the matter complained of is brought to the attention of the court;" and held a petition to be sufficient which was very similar to the petitions filed in the present case.

Under these authorities, the petitions must be held to be sufficient. By them, the respondents were fully advised of the charges against them, and they had the fullest opportunity, in person and by counsel, to meet such charges. Moreover, the record does not show that they objected at any time to the form of the proceedings, or to the sufficiency of the petitions.

The chief ground of complaint seems to be that the court permitted evidence to be heard concerning acts of the respondents which occurred after the petitions against them were

filed. It does ~~not~~ appear that some evidence of this character was heard by the chancellor. Assuming that such evidence was incompetent, still, under the familiar rule applicable to all chancery cases, it will be presumed, in the absence of any showing to the contrary, that the chancellor acted only upon the competent evidence; and if the record contains sufficient competent evidence to sustain the decree, the error, if any, in admitting the incompetent testimony may be regarded as harmless. (Keynard v. Curran, 239 Ill. 122, 132; Tunison v. Chamblin, 38 Ill. 373, 382.) There is nothing in the record to show that the chancellor based his findings and judgments upon the alleged incompetent testimony, and, in our opinion, there is ample evidence in the record, apart from any consideration of the alleged incompetent evidence, to sustain the findings and judgments of the court.

As to the contention that the evidence is insufficient to justify the findings, we have carefully studied the evidence in the record, and we find the clear preponderance of the competent evidence supports the findings of the chancellor. It was shown that the complainant is a manufacturer of women's dresses and has a large number of employees; that in the immediate vicinity of the premises occupied by it are many other garment manufacturers, and that the office of the garment workers' unions is located in the same vicinity; that a strike was on because the shops of complainant and other manufacturers were "open" shops; that the respondent Novak is one of the union officers, and that the three women respondents were employed on behalf of the unions, to "do organization work, which," as one of them expressed it, "consists in approaching people and inviting them to join the union;" that the respondent Novak engaged daily in "picketing," and apparently directed it; that on two occasions, after he was served with a copy of the injunction, he followed women employees of complainant and called them "scabs;" that the three women respondents were engaged daily

Alfred. It was proved that such evidence of this character
was given by the defendant. Assuming that such testimony was
inadmissible, still under the familiar rule applicable to all
evidence given, it will be presumed, in the absence of any
showing to the contrary, that the defendant said only what he
testified to have said; and if the court cannot understand the
evidence to contain the words, the words, it says, in writing,
the defendant's testimony will be treated as untrue. (Harris
v. Watson, 100 Ill. 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

in picketing at and near complainant's premises, and that on several occasions they followed employees of complainant, called them "scabs," threatened them with personal violence, and in at least one case, assaulted one of the employees, for the evident purpose of intimidating such employees and causing them to quit their employment with complainant. All these acts were done after it was proved that respondents were fully aware of the issuance of the injunction and were acting in open defiance of it. The respondent Sadlewski, who is the only one of the four who claims she was not served with a copy of the injunction, admitted that in her work of "organizing the trade," she stood daily for hours in front of complainant's premises and, while there, she saw a printed notice posted on the door, which, she testified, she did not read, "because I heard it is an injunction there." The evidence shows the notice referred to was a copy of the injunction, which was posted as soon as the injunction was granted. It was also shown that similar notices were posted conspicuously elsewhere, mailed to all the defendants, and personally served on the other respondents with whom she was engaged in picketing.

As to the contention that the punishment is excessive, counsel for respondent takes the position that in a civil contempt punishment by imprisonment is not permitted. To this contention it is enough to say that the contrary was expressly held in Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, and was recognized as a punishment that could be imposed in a proper case in Hake v. The People, supra. We do not regard the penalties imposed on respondents as being excessive in view of all the facts and circumstances in evidence. That penalty shall be imposed in a particular case of civil contempt must, in the nature of things, rest largely in the discretion of the chancellor, and certainly it cannot be said in this case that the discretion of the

chancellor was abused.

For the reasons stated the order appealed from is affirmed.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

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January 7, 1931, and July 1, 1931.

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GRACKLINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 638

On appeal in the matter of
MARY CURSWITZ,
Appellant.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This is one of twelve appeals perfected from the same order of the Superior court of Cook county adjudging the twelve appellants guilty of contempt of court for violating an injunction entered on March 4, 1934, restraining the appellants, who are members of garment workers' unions, and all persons aiding or confederating with them, from picketing in front of and near complainants' premises in furtherance of an alleged conspiracy to injure the complainants, who are manufacturers of ladies' dresses. These twelve appeals were consolidated in this court and heard upon the record, abstracts and briefs filed in this case.

The proceedings against appellants were instituted by the filing of affidavits in the cause in which the injunction was issued. Upon the filing of these affidavits, orders were entered directing writs of attachment to issue against the respondents, and upon such writs they were brought into court, at different times, and thereupon orders were entered setting a day for hearing of the charges made in the affidavits and releasing the respondents from custody upon their own recognizances. The

DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

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JOINT BOARD OF INQUIRY
WASHINGTON, D.C.

ALBANY, N.Y.

ALBANY, N.Y.
JANUARY 10, 1938

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RE: ALBANY, N.Y.
JANUARY 10, 1938

RE: ALBANY, N.Y.
JANUARY 10, 1938

This is one of the many cases which have been referred to the Albany Board of Inquiry. The case involves the activities of the Albany Board of Inquiry, which was organized in 1934, and which has since that time been engaged in a study of the activities of the Albany Board of Inquiry. The case involves the activities of the Albany Board of Inquiry, which was organized in 1934, and which has since that time been engaged in a study of the activities of the Albany Board of Inquiry. The case involves the activities of the Albany Board of Inquiry, which was organized in 1934, and which has since that time been engaged in a study of the activities of the Albany Board of Inquiry.

The proceedings against the Albany Board of Inquiry were initiated by the Albany Board of Inquiry in the year 1934, when the information was received. From the time of the filing of the Albany Board of Inquiry, the Albany Board of Inquiry has been engaged in a study of the activities of the Albany Board of Inquiry. The case involves the activities of the Albany Board of Inquiry, which was organized in 1934, and which has since that time been engaged in a study of the activities of the Albany Board of Inquiry.

record shows that all of them appeared in person and by counsel at the trial; that no objection whatever was made at any time during the trial to the manner in which the respondents had been brought before the court, nor to the form of the proceedings. All were tried together at the same time upon oral testimony as well as upon the affidavits previously filed, which were read in evidence, and at the conclusion of the hearing the respondents were found guilty of contempt of court for violation of the injunction above mentioned, and appellant Mary Gurewitz and five other respondents were severally fined \$125 each; the respondent Eugenia Szlachta was fined \$100; the respondent David Krauss was fined \$150; the respondent Isadore Dixler was fined \$200; the respondent Minnie Seidel was fined \$150, and in addition was sentenced to jail for five days; and the respondents Morris Kravis and John Gottlieb were each severally fined \$200, and in addition were sentenced to jail for fifty days each.

It is contended that the Superior court did not acquire jurisdiction of the appellants by the mere fact that it issued attachments for them, for the reason that the affidavits for attachment were not sufficient to require appellants to answer the same, nor subject them to a penalty. This contention is not argued in the brief except by reference to briefs in two other similar cases, opinions in which are filed herewith. The point made in such other briefs is that the preliminary proceedings are insufficient. Without repeating what is said in the opinions filed in these cases, it will be sufficient for the purpose of this case to say, first, that no objection was made that the charges of the respondents were insufficient either in form or in substance, nor did the respondents claim they did not know with what they were charged; and, second, it is apparent from the record that they were fully informed of the nature of the charge against them and had every reasonable opportunity to defend

against the same; and, under the authorities, this is all that was required. (Hake v. The People, 230 Ill. 174; O'Brien v. The People, 216 Ill. 354; Flannery v. The People, 225 Ill. 62; Oster v. The People, 192 Ill. 473, 478.)

It is next contended that the finding that all the respondents had notice and knowledge of the injunction and the contents thereof is erroneous and not supported by the evidence. There is no merit in the contention. Respondents did not take the witness stand, nor introduce any evidence disputing in any manner the testimony of the witnesses who testified for the complainants or the affidavits read in evidence. The evidence shows that for many days before the attachments were issued, and after copies of the injunction, printed in large type, were posted in conspicuous places at the entrance to complainants' buildings, large numbers of the strikers, among them respondents, continued to patrol up and down in front of complainants' premises, directly in front of such notices, accosting employes, interfering with their coming and going, calling them "scabs," threatening them, and even resorting at times to actual violence; that the police were called and made many arrests of the persons so picketing, but the offenders returned as soon as bail had been furnished; that some of the respondents were warned that they were violating the injunction; that attempts were made to serve copies of the injunction upon all of the picketers but in most cases such service was refused; that several of respondents were personally served, however; that some of the picketers were brought into court and fined for contempt; and that three of the respondents, after being attached and released upon their assurance to the court that they would discontinue picketing until the trial, returned to the picket line and resumed picketing as before. It is impossible to read the evidence heard without being convinced that all of the respondents were fully aware of the fact and nature of the writ of injunction

and were acting in open defiance of it. It is apparent that the acts of the respondents were concerted and had the effect of interfering seriously with the conduct of complainants' business.

It is finally contended that the sentences imposed are excessive, and that a sentence of imprisonment cannot be made in a proceeding such as this was. In Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, it was held that a fine and imprisonment in the county jail for a definite term, either or both, in the discretion of the court, is recognized in this state as a proper judgment for a violation of an injunction of a civil nature. Under the facts and circumstances shown by the evidence, we are unable to say there was any abuse of the court's discretion in that particular.

The order appealed from is affirmed.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

and were being in some relation to it. It is important that the side of the proposition was presented and the other of supporting evidence with the consent of the committee.

business.

It is timely to mention that the committee passed the resolution, and that a number of important cases were in a pending state in this case. In the case of State v. John Doe, the case is now in a state of suspension in the county jail for a definite term, after the court, in the execution of the court, is required to take action as a proper judgment for a violation of an injunction of a civil nature. Under the facts and circumstances shown by the evidence, we are unable to say there was any abuse of the court's discretion in that particular.

The next appeal from is filed.

THOMAS.

James, E. G., and others, vs. James.

76 - 29713

GRACELINE DRESS COMPANY,
et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 638

On appeal in the matter of
ROSE SILVER,
Appellant.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This is one of twenty-one appeals perfected from the same order of the Superior court of Cook county, in which the twenty-one appellants were found guilty of contempt of court for violating an injunction restraining the appellants - who are members of garment workers' unions - and all persons aiding or confederating with them, from picketing in front of and near complainants' premises in furtherance of an alleged conspiracy to injure complainants - who are manufacturers of ladies' dresses. While the appeals are several, the respondents were all tried at the same time upon the same charges, which were made in affidavits filed at the same time.

The affidavits state, in substance, that as soon as the injunction was issued, printed copies thereof were posted and conspicuously displayed on or along side of the doors of complainants' premises where they could be easily read, but that notwithstanding that fact, a great many persons, principally women, continued to patrol and picket in front of complainants' premises every working day, mornings, noons and nights, when employees ordinarily go to and from their work; that among these thus

patrolling and picketing in front of complainants' premises were Mary Roe, John Roe, Helen Jones, Jane Black and Emma Green (and other evidently fictitious names,) "whose true names are unknown" to the affiant, but whom, he alleges, "he can point out." Upon the filing of such affidavits, orders were entered that attachments be issued against the persons so named therein, to be brought into court "to answer for the alleged contempt of this court for the alleged violation of the injunction issued in this cause." Attachment writs were issued accordingly and the respondents were brought into court at different times. When appellant, Rose Silver, was thus brought in, an order was entered which states that "It appearing to the court that Emma Green, whose true names and address are Rose Silver, 3519 Ogden Ave., Chicago, respondent herein, has been attached and is now in custody of the sheriff and is present in person before this court, it is ordered that a trial of said respondent for the alleged violation by said respondent of the injunction heretofore entered in this cause be and is set for April 9th, 1924," and that such respondent "attend said trial in person from day to day until final order is entered in the matter." The order then states that respondent's solicitor "having in open court assured this court that said respondent will not picket or in any way violate the injunction until this matter is determined," it is further ordered that respondent be released from custody. Substantially similar orders were entered as each of the other twenty respondents were thus brought in. The transcript of the record "as per process" shows that upon the day so set, the "cause came on for hearing upon the affidavits of A. H. Gray and others filed herein, charging said respondents with violations of the injunctive order heretofore entered by this court on the 4th day of March, 1924, and upon the answers of such of said respondents as have filed answers herein;" that the respondents all appeared in court

at the trial in person and by counsel; that the court heard considerable testimony on behalf of complainants, and that only one of the respondents (Yetta Hornstein) testified, confining her testimony to a denial of an alleged assault made by her. Thereupon respondents' counsel stated that he had listened to the testimony and spoken to his clients and that all of them "admitted they were there," and that he could not see "any useful purpose in calling^{on} all of them to specify the number of times they have been there." After arguments, the court entered the order appealed from, which finds all guilty of contempt of court for violations of the injunction, and severally imposes a fine and imprisonment upon each of the respondents. The twenty-one appeals were consolidated in this court and heard upon the record, abstracts and briefs filed in this case.

It is contended that the method adopted of ascertaining respondents' names and bringing them before the court was improper. We do not find in the transcript any statement that respondents, or their counsel, made any objection in the trial court at any time to the manner in which respondents were brought before the court for trial, although the record recites that Mr. Sissman was present in court as their counsel, when they were brought in on the attachments, where (evidently) their names and addresses were ascertained and inserted, in lieu of the fictitious names, in the orders setting the cases for trial "for the alleged violation of the injunction." It appears that upon the trial, some of the witnesses did not know the respondents by name, but were able to identify them in the court room from having seen them several times in the picket line in front of complainants' premises. As their true names had been ascertained before the trial, and inserted in the orders entered when they were first brought in upon the attachment writs, no harm was done to any of them by this method of identification upon the trial. They did not dispute the testimony of the witnesses who

[illegible][illegible]

thus identified them as persons found picketing in front of complainants' premises. The purpose of the attachment writs was served when respondents were brought into court, and the orders directing them to appear on April 9, 1934, for trial for the "alleged violation of the injunction" (i. e., alleged in the affidavits) were sufficient to advise them in a general way, at least, of what they would be called upon to answer. (Gunter v. The People, 192 Ill. 473, 478.) No objection was made at any time that the charges against the respondents were insufficient either in form or in substance, nor did they claim they did not know with what they were charged. It is apparent from the record that they were fully informed of the nature of the charges against them and had every reasonable opportunity to defend against the same; and where such is the fact, the preliminary proceedings are sufficient. (Hake v. The People, 230 Ill. 174; O'Brien v. The People, 216 Ill. 354; Flannery v. The People, 225 Ill. 62.)

Respondents also contend that the evidence does not justify the findings, nor show that respondents "had knowledge of the injunction brought home to him or her." The contention is wholly without merit. It was shown that for many days before the attachments were issued, and after copies of the injunction, printed in large type, were conspicuously posted as stated in the affidavits, large numbers of the strikers - among them respondents - continually patrolled up and down in front of complainants' premises, and directly in front of such notices, screening employees, interfering with them, calling them "scabs," and resorting at times to actual violence; that the police were called and made many arrests but the offenders returned in a short time; that some of respondents were warned that they were violating the injunction; that four of them were personally served with copies of the injunction but that such service brought only a laugh from such respondents, without any cessation of the picketing.

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It is impossible to read the evidence without being convinced that respondents were fully aware of the fact and nature of the injunction and were acting in open defiance of it. It is also impossible to escape the conclusion that these concerted acts of respondents had the effect of interfering seriously with the conduct of complainants' business, for which no adequate remedy was available to them except contempt proceedings. The evidence is not contradicted, and it is clearly sufficient to justify the findings made by the chancellor.

It is further contended that the punishments inflicted were "cruel and unusual." Eighteen of the respondents were fined \$350 each and sentenced to ten days imprisonment. Two others were fined the same amount and sentenced (respectively) to fifteen and twenty days of imprisonment. The remaining respondent - the only man among them - was given twenty days in jail and fined \$450. The uncontradicted evidence shows that at the time respondents were attached, a strike, instituted by members of the defendant unions, had been in progress for more than a month; that during that time complainants' buildings and places of business were picketed during every working day; that frequently a hundred or more strikers patrolled up and down the street in the two blocks in which complainants' premises are located, and interfered with complainants' employees to such an extent that guards were employed to escort employees to and from their places of employment; that the pickets surrounded such employees, crowding them, calling them "scabs," threatening them with violence unless they quit work; that many were arrested and sent away in custody of police only to return soon after; that attempts were made to serve the pickets with injunction notices and that service was refused in many cases; that the pickets refused to give their names and addresses; that about two weeks after the strike began some of the pickets were attached and tried and found guilty of contempt. Seven of these were fined a total

of \$300, which was promptly paid by the attorney for the defendant unions; that the picketing continued; that thereafter twelve others were arrested and found guilty of contempt and fined amounts varying from \$125 to \$200 each, and some of them sentenced to small terms of imprisonment; that many others of the pickets were likewise found guilty of contempt for violating the same injunction and ordered punished but appeals were perfected; that in spite of all such convictions, the picketing continued; that during the week prior to the arrest of these respondents, at least twenty persons were constantly patrolling in front of complainants' premises and that the imposition of small fines and sentences apparently had no effect whatever. In view of these facts and circumstances, we think the punishment inflicted upon the respondents was not excessive. Certainly it cannot be said that the discretion of the chancellor in that respect was abused.

Finding no reversible error in the record, the order appealed from is affirmed.

AFFIRMED.

Barnes, W. J., and Gridley, J., concur.

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77 - 29714

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
DAVID KRAUSS,
Appellant.

4899a
APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 638

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

By this appeal, David Krauss seeks to have reversed an order of the Superior court adjudging him guilty of contempt in violating an injunction.

The injunction was granted upon a bill, filed by certain manufacturers of ladies' dresses, which alleges that the defendant unions and certain other persons therein named, including appellant, who are members of garment workers' unions, instituted a strike against the complainants, and that the defendants are interfering with the conduct of complainants' business. Upon the filing of that bill and its accompanying affidavits, an injunction was issued restraining the defendants from interfering with or threatening or intimidating any of complainants' employees and from soliciting or inducing any of such employees to quit their employment, and from aiding or assisting ^{others} in doing any such acts.

The contempt proceeding was begun by filing affidavits upon which a rule to show cause was issued against appellant. The affidavit alleges, in substance, that Krauss and "two strange girls" called on the parents of Rose Iskiwitch, an employee of one of the complainants, and told such parents that if their

daughter did not stop working and "sign up at the union" there would be trouble; that "Rose would be beat up" and "would be in a hospital for six months." Apparently, Krauss filed an answer to the rule, as such an answer is referred to several times in the certificate of evidence, but what the answer contained does not appear from the praecepte record.

Upon the hearing, Krauss was present in person and by counsel, and after complainants' evidence was heard, testified in his own behalf. He denied making any threats. He admitted calling on the parents of Rose Iskiwitch, but claimed he was only giving them a little friendly advice.

Many legal propositions are stated in the brief of appellant's counsel, but they argue none of them. For the most part, they relate to the nature and form of contempt proceedings. No defect in the proceedings is pointed out or argued in the briefs, and we see none which require the order to be reversed. Krauss was not only a defendant to the original bill, but he was served with a copy of the writ of injunction and it is clear that he was fully informed of the nature of the charge made against him in the affidavits, was present in court in person and by counsel, and had full opportunity to meet such charges. This was sufficient, so far as the procedure is concerned. (Wake v. The People, 220 Ill. 174; O'Brien v. The People, 216 Ill. 354; Flannery v. The People, 225 Ill. 62.)

The only contention which is argued in appellant's brief is that the evidence does not prove, "or tend to prove," any violation of the injunction, or any intent on the part of the respondent to violate it. The evidence is clearly to the contrary. In so far as there was any denial by defendant of the facts stated in the affidavits, the question was one of the

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was in the alliance, and because it was in power and its control,

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Explain and only a reference to the evidence will, but we may

briefly, and we are now going to make the point to be answered.

We intend in the proceedings to put forward our argument in the

fact, they relate to the subject and have no material significance.

organization's conduct, but they were made by them. The two main

Many legal points have been raised in the course of

[illegible]

credibility of witnesses. The chancellor saw and heard them, and there is nothing in the record that would justify this court in reversing his conclusion.

For the reasons stated, the order appealed from is affirmed.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

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GRACKLINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
WANDA KOLETTA,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 638

MR. JUSTICE WITCH DELIVERED THE OPINION OF THE COURT.

This appeal is from an order adjudging appellant, hereinafter referred to as respondent, guilty of contempt of court in violating an injunction entered March 4, 1924, by the Superior court upon a bill filed by sundry manufacturers of ladies' dresses against the defendant unions and certain of their members, who were engaged in a strike at that time.

The injunction restrains defendants and all other persons having knowledge thereof, from threatening, intimidating or assaulting any of complainants' employees.

The contempt proceeding was begun by filing affidavits stating, in substance, that on May 19, 1924, Anna Balind, an employe of one of the complainants, on leaving her employment for the day, was followed by respondent, who, on overtaking the employe, called her a vile name, and, saying: "You take my job; this is what you get," struck her a blow in the eye, knocked her hat off, and stepped on it; that the affiant screamed and a policeman ran up and arrested the respondent. The police officer's affidavit corroborating this statement was also filed, and thereupon a rule was entered upon respondent to show cause why she should not be attached and punished for contempt of court for

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340 I.A. 638

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violating the injunction. It appears from the record that the respondent was then in court, apparently on some other matter, and on motion of complainants' solicitor, the rule to show cause was made returnable two days later, with leave to respondent to file counter-affidavits, if any. If any counter-affidavits were filed, the praeiudice record does not show them, nor does the certificate of evidence. The record shows that upon the return of the rule, a hearing was had, in which the affidavits filed by complainants were read and oral testimony was heard in corroboration thereof; that respondent was present in person and by counsel, and testified in her own behalf. She also called another witness who was with her before the assault was committed but did not see the assault, nor know the respondent was arrested. At the conclusion of the hearing, respondent was fined \$150 and ordered to stand committed until the fine and costs were paid, not exceeding four months.

Many legal propositions are stated in the brief of appellant's counsel, but they argue none of them. For the most part, they relate to the nature and form of contempt proceedings. No defect in the proceedings here in question is pointed out, or is argued in the briefs, and we see none which requires a reversal. It appears from the evidence that respondent had knowledge of the fact and of the nature of the injunction, and was acting in open defiance of it. She was fully informed, by the affidavits filed, of the nature of the charge made against her as to the assault upon Anna Balind, and she was present in court in person and by counsel at the time of the trial, and had the fullest opportunity to meet such charges. This was sufficient so far as procedure is concerned. (Make v. The People, 230 Ill. 174; O'Brien v. The People, 216 Ill. 354; Flannery v. The People, 225 Ill. 62.)

Appellant's counsel say that they seek a reversal of the

order appealed from upon two grounds; first, that the finding of guilt is not supported by a preponderance of the evidence, and, second, that the finding that appellant had previously been found guilty of a violation of the injunction by another judge of the Superior court is erroneous because the evidence as to that fact was irrelevant and immaterial in this case. As to the first contention, we think the preponderance of the evidence clearly supports the finding of the chancellor. In so far as there was any denial by respondent of the facts testified to by complainants' witnesses, the question was one of credibility, and we see no reason why we should substitute our opinion in that respect for that of the chancellor, who saw and heard the witnesses. As to the second contention, if the evidence of the prior conviction was immaterial, it is presumed that the chancellor disregarded the same. There is sufficient evidence to sustain the order appealed from, apart from any consideration of such alleged immaterial evidence.

For the reasons stated the order appealed from is affirmed.

AFFIRMED.

order appealed from upon the ground, first, that the finding
of guilt is not supported by a preponderance of the evidence,
and, second, that the finding that appellant had previously been
found guilty of a violation of the provisions of another stage
of the Statute Book is erroneous because the evidence as to
that fact was irrelevant and immaterial in this case. As to the
first contention, we think the preponderance of the evidence
clearly supports the finding of the Commissioner. In so far as
there was any doubt or controversy of the facts testified to by
complainant, witnesses, the finding was not in controversy,
and so we need not say in detail what evidence was given in that
respect for that of the Commissioner, the law and facts are
clear. As to the second contention, it is evident of the
prior conviction was immaterial, it is obvious that the
Commissioner disregarded the same. There is sufficient evidence
to sustain the order appealed from, apart from any contention
of such alleged immaterial evidence.

For the reasons stated the order appealed from is
affirmed.

REVEREND,

24 - 29661

HYMEN BROTHERS, a Corporation,
et al.,
Complainants and
Appellees,

vs.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION et al.,
Defendants.

CONSOLIDATED APPEALS
FROM SUPERIOR COURT
OF COOK COUNTY.

On Appeal of OLGA GALICH,
Appellant.

240 I.A. 639

Consolidated for hearing with similar
Appeals of BESSIE KATZ, No. 29664; ISIDORE
KREEGER, No. 29663; SAM DORF, No. 29666;
and JOSEPH KRAVITZ, No. 29671.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Olga Galich seeks to reverse an order of the Superior court of Cook county, entered April 5, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924; imposing upon her a fine of \$175, together with the costs of the proceeding; and ordering that she be confined in jail until she pay the fine and costs, or until discharged according to law. On the same day similar orders were entered as to Bessie Katz, Isidore Kreeger, Sam Dorf and Joseph Kravitz, except that a larger fine, viz: \$200, was imposed upon Bessie Katz, and they perfected separate appeals, which, by agreement, have been consolidated for hearing with the present appeal. One set of abstracts and briefs have been filed and the cases have been argued orally by respective counsel.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartner-

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ships, engaged in the business of making and selling ladies' dresses and garments on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers; that the defendant Union and locals 5, 18, 39, 81 and 100, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents or members of the various local organizations; and that on February 27, 1934, said local organizations instituted a general strike of its members, some of whom were employed by complainants or other similar concerns located nearby, and defendants had caused and were causing the premises of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be threatened, and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc.

On March 4, 1934, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or intimidating persons employed by or going to and from the premises of complainants; (e) from addressing or referring to any of complainants' employees as "scabs," or applying to them other offensive epithets; and (f) from advising, encouraging or assisting in the doing of any such things.

On March 27, 1934, on complainants' motion, the court, having considered the affidavit of Barnet L. Stein, other affidavits

filed and complainants' sworn bill, ordered that writs of attachment issue forthwith to bring before the court "Anna Smith, May Smith, James Smith, John Smith and Richard Smith (whose true names are unknown, to be pointed out by Barnett L. Stein) * * to answer for the alleged contempt of this court for the alleged violation of the injunction ordered by this court in this cause." In Stein's affidavit, sworn to on March 27th, he states in substance that he is a member of the firm of Stein & Seiden (one of the complainants), located at 212 South Market street, Chicago; that since the calling of the strike, February 27th, numerous persons have patrolled and picketed, singly and in groups, between the hours of 7:30 and 9:30 a. m., and 3:30 and 5:00 p. m., in front of said premises; that shortly after the injunction of March 4th was issued, his firm caused printed copies thereof to be posted on the doors of said premises and copies to be served on persons there picketing; that the picketing of many men and women, in groups, has recently become more violent and annoying; that about 9:00 o'clock a. m. on March 24th, he caused printed copies of the injunction to be served on certain pickets - three men and two women - whom he has seen regularly, either singly or in a group; that when its employees seek to enter said premises, or leave at night, these five pickets continue to call them "scabs" and other names, threaten them, and on occasions have attempted to strike or kick them; that he has seen them patrolling, picketing and so threatening employees every day during the past week, and particularly on March 26th, between the hours of 3:30 and 4:30 p. m.; that their names and addresses are unknown to him; but that their faces are familiar and he will be able to point them out. On the day following the entry of the court's order the respondents were arrested under said fictitious names, brought into Court and each identified by their true names. None of them thereafter made any motion to

quash the writ of attachment on any ground or questioned in any manner the jurisdiction of the court over their persons.

On April 1, 1934, there was a hearing at which all respondents were represented by counsel. Complainants introduced in evidence without objection Stein's said affidavit; an additional affidavit by him, sworn to on March 24th; and affidavits of Albert E. Hanley and George F. Sherer, sworn to on March 24th. In Sherer's affidavit he states in substance that on the afternoon of March 21st he handed a printed copy of the injunction to Bessie Katz, telling her that it was a writ of injunction, preventing her picketing; that he attempted to read the contents to her but she walked away; that at that time she was patrolling and picketing in front of and adjacent to the premises of Stein & Seiden; that he again saw her patrolling and picketing there later on the same afternoon; that on the following morning, about 8:15 a. m., March 22nd, he again saw her picketing there and approaching employees of said firm and calling them "scabs;" and that later she became so boisterous to those entering said premises that she was arrested and taken to the police station. Complainants also introduced in evidence without objection a printed copy of the injunction. On the top of the paper are the words, in large black type, "Injunction Order," and on it are printed the title of the cause and the full provisions of the injunctive order, certified by the clerk under date of March 4th. It was agreed that this copy was identical with those which had been posted on the doors and entrances of complainants' premises, and with those which from time to time were being served upon various strikers and pickets. Complainants also called as witnesses Earnest L. Stein, R. R. Seiden (another member of said firm of Stein & Seiden), Louise L. Miller (an employee of said firm) and R. W. Stokes (a police officer), and they were examined and cross-examined. The respondent Olga Galich testified in her own behalf

and she called one additional witness, a physician, who testified to treating her right foot prior to March 17th. None of the other respondents were called as witnesses. Stein testified in substance that he knows all five respondents, having frequently seen them on different days in front of said premises since the issuance of the injunction; that shortly after its issuance he caused copies of the injunction writ to be served on each; that "our deputy sheriff served them personally with injunctions in front of our premises;" that he personally saw said deputy attempt to hand a copy to each, but each refused to receive it, and then said deputy would put a copy "under their arm," and, as they would not take it, "it fell on the sidewalk;" and that on March 5th and thereafter printed copies of the writ, identical to one introduced in evidence, were posted on the front doors of said premises in full view of those passing by on the sidewalk. As to Olga Galich, he testified in substance that he has seen her at least a dozen times in front of the premises, since March 4th, patrolling and picketing, in company with some or all of the other respondents, and other striking garment workers; that on various mornings when employees were entering the premises she would try to push and crowd against and intimidate them and call them "scabs;" that he saw her doing said acts on Friday or Saturday morning, March 28th or 29th, when she was arrested under said attachment; and that on most occasions she was in company with Beessie Katz, and sometimes in company with ^{the} other three respondents and other men. As to Beessie Katz, he testified that he had seen her patrolling and picketing in front of said premises "most every day since the strike," and at least a dozen times since she was served with the injunction, and that she "was one of the most violent ones there," and a "leader of the other pickets." As to respondents Krueger, Dorf and Kravitz he testified that he has seen them all, almost every day since the calling of the

strike, patrolling and picketing in front of the premises, in company with said two women respondents and others. Seiden's testimony, and that of Stokes, corroborated that of Stein in material particulars. During the examination of Louise E. Miller (an employe of Stein & Seiden since February 18th, and who did not go out on the strike) all five respondents, then sitting in court, were identified by her. She testified that she knew respondent, Dorf, and the two women respondents, that she had seen the other men respondents in their company many times since the strike, patrolling in front of the premises of her employers; that one evening, "last Wednesday," as she was leaving the premises, Olga Galich and Bessie Katz, in company with Sam Dorf, attacked her, followed her to the elevated railroad station, and called her a "scab." Respondent, Olga Galich, a former employe of Stein & Seiden, denied ever having picketed in front of said premises or ever having attacked the witness Miller, who, she said, she formerly knew as "forelady" for Stein & Seiden.

On April 5, 1934, the orders appealed from were entered. The recitals and findings of the court in the separate orders as to each respondent are substantially the same. In the order as to Olga Galich it is recited that complainants filed affidavits against her, "whose true name was then unknown," on March 27th; that an attachment was issued against her, "under the fictitious name of Anna Smith, now known as Olga Galich," to show cause why she should not be punished for contempt for violating said injunction, "as charged in the affidavits herein filed upon which said attachment issued;" that she filed her affidavit in reply to said affidavits; and that the court has considered all affidavits and the bill of complaint and the testimony adduced at the hearing and the arguments of counsel. The court then finds that it has jurisdiction of the subject matter and of the parties, and, after making findings

as to prior proceedings in the cause, further finds in substance that Olga Galich was served with a printed copy of said injunction; that printed copies of the same had been posted on complainants' premises within full view of those passing; that Olga Galich was prior to the issuance of the injunction, and is, a dressmaker and a member of the defendant union;^{and} that she wilfully violated said injunction in the following particulars: (a) in that she picketed and patrolled in front of and along the place of business of said Stein & Seiden, from day to day, from March 4th to March 26th, 1934, and even after she was served with the injunction and after the same had been posted on the doors of said place of business; (b) in that she did so especially during the mornings and afternoons of March 24th, 25th and 26th, sometimes alone and sometimes in the company of four other pickets, and on said days joined said four pickets and others in surrounding employees about to enter or leave their place of employment, and in interfering with their so doing, and in calling them "scabs" and other vile names, and in threatening them against returning to work; and (c) in that she, in company with Sam Dorf, shortly prior to March 27th, so interfered with one Louise Miller, an employe of Stein & Seiden, as the latter was leaving said premises for her home, and followed her, and threatened and admonished her against returning to her work, and called her a "scab" and other vile names.

Counsel for appellants in all five appeals contended that the affidavits, which formed the basis for the issuance of the attachment writs, were insufficient, and that the writ should have been quashed; and that the court did not have jurisdiction of the subject matter of of the persons of the several respondents at the time of the hearing, and, hence, the orders appealed from should be reversed. We cannot agree. We think that the affidavits clearly

reversed. We cannot agree. We think that the attitude clearly

were sufficient to form the basis for the issuance of said attachment writs, and to arrest the respondents under the fictitious names mentioned, - their real names not then being known. Furthermore, after their arrest and after their real names became known to the court, none of the respondents made any motion to quash the writs, or in any manner questioned the jurisdiction of the court over their persons. They treated the order for the writs, supported by said affidavits, as a rule upon them to show cause why they should not be punished for contempt for violating the injunction, and, on the hearing on the merits which followed, made no objection to the introduction in evidence of said affidavits. By so acting they waived all objections to the court's jurisdiction over their persons. (MacKenzie v. MacKenzie, 141 Ill. App. 126, 132; aff'd 233 Ill. 616, 623; Nicholas v. People, 165 Ill. 502, 504.) And, clearly, the court had jurisdiction of the subject matter. (O'Brien v. People, 216 Ill. 354, 363; Franklin Union v. People, 230 Ill. 365, 366; Lyon & Healy v. Piano Workers' Union, 239 Ill. 176, 181.) If there were any technical defects in the accusations or affidavits they were cured (13 Corpus Juris, p. 67, sec. 93.) However, we think that the affidavits were amply sufficient to advise them of the charges they were called upon to meet at the hearing, at which time they were given full opportunity to present their defense thereto, if any they had. (Kake v. People 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367; Osier v. People, 192 Ill. 473, 478.) No substantial right of any of the respondents was infringed or denied. (Hymen Bros. v. International Ladies' Garment Workers' Union, No. 29,577, opinion of this appellate court filed June 9, 1926.)

And, in our opinion, there is no merit in counsel's further contention that there is no evidence, as to three of the respondents (Kreeger, Dorf and Kravitz) that they were served with notice of the injunction or had any knowledge of its issuance.

Complainants' evidence is directly to the contrary and said respondents did not testify on the hearing. As said in O'Brien v. People, supra, (pp. 366-7), if they did not have knowledge of the existence of the injunction, "it was their duty to properly present that fact to the trial court upon the hearing, which they failed to do."

And we think that under all the evidence it is conclusively shown that all five respondents intended to violate the injunction, and did so wilfully and deliberately. And we cannot say that the amounts of the several fines imposed are excessive (American Cigar Co. v. Berger, 221 Ill. App. 332, 337); or that in their imposition the court abused its discretion. (Hoeffken v. Belleville Trades & Labor Assembly, 229 Ill. App. 28, 36; Ash-Madden-Rac Co. v. International Ladies' Garment Workers' Union, 290 Ill. 301, 306).

The order of the Superior court appealed from, as to appellant Olga Galich, should be affirmed, and it is so ordered.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

25 - 29662

HYMEN BROTHERS, a
corporation, et al.,
Complainants and Appellees,

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

IN THE MATTER OF THE CONTEMPT
PROCEEDINGS AGAINST FLORENCE CORN,
Appellant.

240 I.A. 639

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Florence Corn seeks to reverse an order of the Superior court, entered March 28, 1924, wherein she was adjudged guilty of contempt of court for violating an injunction against picketing, assaulting, etc., and committed to jail for thirty (30) days, or until discharged according to law, and ordered to pay the costs of the proceeding.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartnerships engaged in the business of making and selling ladies' dresses and garments on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers; that the defendant Union and locals 5, 18, 59, 81 and 100 are voluntary associations of which many garment workers are members; that the other defendants are officers, agents or members of the various local organizations; and that on February 27, 1924, said local organizations instituted a general strike of its members, some of whom were employed by complainants or other similar concerns located nearby, and defendants had caused and were causing the premises of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be

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IN THE MATTER OF THE ESTATE OF
JAMES EARL RAY, DECEASED
JAMES EARL RAY, DECEASED
JAMES EARL RAY, DECEASED

THE UNITED STATES OF AMERICA, by and through the undersigned, its attorneys, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Department of Justice.

By this report it is shown that the estate of James Earl Ray, deceased, was established in the District Court of the United States for the District of Columbia, and that the same was confirmed by the Supreme Court of the District of Columbia. It is further shown that the estate of James Earl Ray, deceased, was established in the District Court of the United States for the District of Columbia, and that the same was confirmed by the Supreme Court of the District of Columbia. It is further shown that the estate of James Earl Ray, deceased, was established in the District Court of the United States for the District of Columbia, and that the same was confirmed by the Supreme Court of the District of Columbia.

In testimony whereof, I have hereunto set my hand and the seal of the Department of Justice at Washington, D.C., this 10th day of January, 1942.

Very truly yours,
JAMES EARL RAY, DECEASED
JAMES EARL RAY, DECEASED
JAMES EARL RAY, DECEASED

threatened, and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc.

On March 4, 1924, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or intimidating persons, employed or going to and from the premises of complainants; (e) from addressing or referring to any of complainants' employees as "scabs," or applying to them other offensive epithets; and (f) from advising, encouraging or assisting in the doing of any such things.

On March 13, 1924, on motion of complainants, the court, after considering the affidavit of Albert E. Manley, other affidavits and complainants' bill, ordered that a writ of attachment issue forthwith to bring before the court Florence Corn (appellant) and two other named women "to answer for the alleged violation of the injunction." In Manley's affidavit it is stated in substance that about 4:30 p. m. on March 6th he was in front of the premises of L. Wolman (one of the complainants) at 319 South Market street, and saw numerous strikers, including appellant, then and there patrolling and picketing; that he particularly noticed appellant and one Eleanor Sadlowska who had become boisterous and riotous and who then and there were arrested; and that on their way to the police station he gave them copies of the injunction writ.

is known as depicted in the picture and is the subject of the following

On March 4, 1974, the first issue of the journal was published.

[illegible]

On March 12, 1964, on motion of Commissioner, the court ordered that the petition be granted and that the respondent be ordered to pay the costs of the petition.

In the affidavit of C. S. Haegel are contained statements substantially the same as in Hanley's affidavit and the further statements in substance that about 8 a.m. on March 8th he saw many strikers, including appellant and Eleanor Sadlowska who had been arrested on March 6th, patrolling and picketing in front of the premises or plant of Wolman; that a few minutes later, as Adele Wolman (sister of L. Wolman) was coming to said plant, he saw appellant and Eleanor Sadlowska attack her and kick her; and that he heard them call her a "scab" and other vile epithets and threaten her life if she did not stay away from said plant. In the additional affidavit of Haegel and that of L. Wolman are contained statements showing repeated violations of the injunction by many strikers in the vicinity of the respective premises of complainants. All four of these affidavits were sworn to on March 13th, the day before the attachment writ was issued. By virtue of the writ the appellant was arrested and brought into court. Pending the hearing she was released on her own recognizance. The record does not disclose that she ever made any motion to quash the writ. After some delay she filed an unsworn answer to the rule contained in the order for the writ, and on March 19th there was a hearing in open court on the charges, at which both she and her counsel were present.

At this hearing complainants introduced in evidence the four affidavits and also called as witnesses Hanley and Haegel and five other persons, and they were examined and cross-examined. Appellant was a witness in her own behalf, and her said answer was read to the court.

Following the hearing the order appealed from was entered, in which, after reciting the prior proceedings, the court found in substance that the respondent (appellant) was served with copies of the injunction writ on March 6th, that prior to its issuance she was, and is now, a dressmaker and a member of the defendant

In the afternoon of 21. August, the following statements were
submitted to the court as in Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 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2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234,

union, and that she knowingly and willfully violated the injunction in the following particulars, (a) in that on March 8th she engaged with another person in an assault upon Adele Wolman, an employe of L. Wolman, one of the complainants, and kicked her as she was about to enter her place of employment; (b) in that on March 8th, 7th, 8th and 11th she patrolled and picketed in front of and along the places of business of complainants; (c) in that on the afternoon of March 11th, she, in company with four other women, picketed in the vicinity of 325 West Jackson Boulevard, Chicago, and, while so picketing she, together with the four other women, attempted to assault a small girl, coming out of the building on said premises, that thereupon a police officer, named Grady, endeavored to prevent such assault, and that thereupon she and the four other women attacked him and scratched, bruised and beat him; (d) in that on March 17th she patrolled and picketed on South Market Street and West Jackson Boulevard in front of and along the premises of several of complainants, and that she did this after she had appeared before the court on March 14th (having been arrested on said attachment writ and released on her own recognizance), and had promised the court that she would not again patrol or picket in the vicinity of the premises of any of complainants; and (e) in that she so patrolled and picketed on March 17th after the following further happenings: That prior to February 27th, when said strike was called, she was employed by the Queen Dress Company; that thereafter the defendant union called off the strike as to that company and she (appellant) returned to her work; and that on March 14th, through the efforts of one Bielis, a representative of said union and a defendant to complainants' bill, she obtained a leave of absence for ten days from her employer, and left her usual work and engaged in said patrolling and picketing.

We deem it unnecessary to discuss at length the testimony given on the hearing by complainants' witnesses, or that of appellant in her own behalf. Suffice it to say that after reviewing the same, as contained in the abstract, we are of the opinion that the findings of the court are fully sustained by a clear preponderance of the evidence. Counsel for appellant contend that the court erroneously admitted certain testimony in evidence. To fail to discover any such rulings as can be considered prejudicial. Even if certain admitted testimony might be considered as incompetent and irrelevant under the charges as contained in the affidavits, still there was abundant proper evidence to support them. And in such case a reviewing court will presume that the court did not consider any incompetent evidence.

Heintz v. Dennis, 216 Ill. 487; Dings v. Dings, 123 Ill. App. 318, 320.)

And in our opinion there is no merit in counsels' further contention that the court did not acquire jurisdiction of appellant's person for the reason that said affidavits, which formed the basis for the issuance of the attachment writ, were insufficient. We think they were sufficient for that purpose, and also for the rule on appellant, contained in the order for the writ, to show cause why she should not be adjudged in contempt. She made no motion at any time to quash the writ, but, on the contrary, treated the order for the writ as a rule on her to show cause, etc., and filed an answer on the merits. By so doing she waived all objections to the court's jurisdiction over her person. (MacKenzie v. MacKenzie, 141 Ill. App. 126, 132; aff'd, 238 Ill. 616, 623; Nichols v. People, 165 Ill. 502, 504.) And the affidavits were clearly sufficient for the issuance of the rule, and on the subsequent hearing she was given ample opportunity to meet, if she could, the charges contained therein. (Hake v. People, 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367.)

Counsel argue that, inasmuch as two of the court's special findings relate to acts done by her on dates subsequent to the time of the issuance of the attachment and the rule (March 13th) the sentence is erroneous, because, apparently, it is based partly on such subsequent acts. The conclusion does not follow. In cases like the present the extent of the punishment rests largely in the court's discretion, and reviewing courts will not interfere with the exercise of such discretion except when abused. (Ash-Madden-Ras-Co. v. International Ladies' Garment Workers' Union, 290 Ill. 301, 306.) And, even if the court's findings as to such subsequent acts, and the evidence to support such findings, be entirely disregarded, we cannot say, in view of the other facts and circumstances in evidence, that there was any abuse of discretion in fixing appellant's punishment at thirty days in jail, etc. (American Cigar Co. v. Berger, 221 Ill. App. 332, 337; Hoefken v. Belleville Trades & Labor Assembly, 229 Ill. App. 28, 35.) And in a proceeding for civil or remedial contempt, such as this was, punishment by confinement in jail is not unusual or improper, as urged by counsel. (Hake v. People, 250 Ill. 174, 195; Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, 205.)

The order of the Superior court appealed from should be affirmed and it is so ordered.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

443

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

IN THE MATTER OF THE CONTEMPT
PROCEEDINGS AGAINST MEYER BARKAN,
Appellant.

240 I.A. 639

MR. JUSTICE GRADLEY DELIVERED THE OPINION OF THE COURT.

This is an appeal by Meyer Barkan from an order of the Superior court of Cook county, entered May 29, 1924, adjudging him guilty of contempt of court for violating an injunction against picketing, and committing him to jail for fifty days, or until discharged according to law.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartnerships, engaged in the business of making and selling ladies' dresses and skirts on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers; that the defendant Union and locals 5, 16, 59, 81 and 100, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents, representatives or members of the various local organizations; and that on February 27, 1924, said local organizations instituted a general strike of its members, some of whom were employed by complainants and other similar concerns located nearby, and defendants had caused and were causing the premises of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be threatened,

00078-96

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a copy of the original letter, and is signed by Abraham Lincoln.

100-443887-100

IN THE MATTER OF THE ESTATE OF
JAMES EARL RAY, DECEASED
JAMES EARL RAY, JR., ADMINISTRATOR

[illegible]

10-11-2010 10:11:10 AM

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-11-2001 BY 60322 UCBAW

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

[illegible]

THE UNIVERSITY OF CHICAGO

1. The first step is to identify the problem or question that needs to be answered.

THE UNIVERSITY OF CHICAGO PRESS

10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10, 10/10/10

1. The first part of the paper is devoted to the study of the asymptotic behavior of the solutions of the system (1) as $t \rightarrow \infty$. It is shown that the solutions of the system (1) tend to zero as $t \rightarrow \infty$ if and only if the matrix A is Hurwitz.

DECLASSIFIED BY: 75102407 AND 75102408 ON 10-10-2010

20. What is the difference between a *strong* and a *weak* type?

[illegible]

James M. Smith, 1892, "The Commercial and Social Condition of the Hawaiian Islands."

to have a minimum of 100,000 in 1990 and 1991.

When used together by individuals and organizations, these tools can help:

[illegible]

6. *Explain the importance of the following factors in the development of a country's economy:*

For the purpose of this study, the following data were collected:

and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc. On March 4, 1924, following the prayer of the bill, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and other persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion, not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or inducing persons, employed by complainants, not to go to or from said premises; (e) from injuring or attempting to injure complainants' property; and (f) from advising, encouraging or assisting in the doing of any such things.

On May 10, 1924, the court entered a rule upon appellant, Meyer Barkan, to show cause why he should not be punished for contempt of court for violating the injunction. The rule was based upon the affidavit of one Ed. Weiss. Barkan filed an answer to the rule, denying all the material facts alleged against him, and on May 22nd, there was a hearing at which Barkan and his counsel were present. The Weiss affidavit and that of Albert E. Manley were read, and afterwards Weiss and four other witnesses, called by complainants, were examined and cross-examined at length in open court. Barkan testified in his own behalf and one witness for him. At the conclusion of the hearing the court entered the order in question, in which the court found in substance that Barkan had notice and knowledge of the injunction shortly after its issuance; that notwithstanding such knowledge he, on April 23, 1924, violated the injunction, in that he instructed certain women, who were picketing in front of the place of business of one of the complainant

and the witnesses and experts were each provided with copies of the report as to the results of their testimony. The report was made on March 4, 1934, following the trial of the case. The report issued a summary of the testimony, and also a summary of the evidence. The testimony, and all material, which was not in the report, was made available to the jury and the court. The testimony, (a) was given in the presence of the jury, and (b) was given in the presence of the court. The testimony, (c) was given in the presence of the jury and the court. The testimony, (d) was given in the presence of the jury and the court. The testimony, (e) was given in the presence of the jury and the court. The testimony, (f) was given in the presence of the jury and the court. The testimony, (g) was given in the presence of the jury and the court. The testimony, (h) was given in the presence of the jury and the court. The testimony, (i) was given in the presence of the jury and the court. The testimony, (j) was given in the presence of the jury and the court. The testimony, (k) was given in the presence of the jury and the court. The testimony, (l) was given in the presence of the jury and the court. The testimony, (m) was given in the presence of the jury and the court. The testimony, (n) was given in the presence of the jury and the court. The testimony, (o) was given in the presence of the jury and the court. The testimony, (p) was given in the presence of the jury and the court. The testimony, (q) was given in the presence of the jury and the court. The testimony, (r) was given in the presence of the jury and the court. The testimony, (s) was given in the presence of the jury and the court. The testimony, (t) was given in the presence of the jury and the court. The testimony, (u) was given in the presence of the jury and the court. The testimony, (v) was given in the presence of the jury and the court. The testimony, (w) was given in the presence of the jury and the court. The testimony, (x) was given in the presence of the jury and the court. The testimony, (y) was given in the presence of the jury and the court. The testimony, (z) was given in the presence of the jury and the court.

On May 10, 1934, the court issued a summary of the testimony. The summary was made available to the jury and the court. The summary, (a) was given in the presence of the jury and the court. The summary, (b) was given in the presence of the jury and the court. The summary, (c) was given in the presence of the jury and the court. The summary, (d) was given in the presence of the jury and the court. The summary, (e) was given in the presence of the jury and the court. The summary, (f) was given in the presence of the jury and the court. The summary, (g) was given in the presence of the jury and the court. The summary, (h) was given in the presence of the jury and the court. The summary, (i) was given in the presence of the jury and the court. The summary, (j) was given in the presence of the jury and the court. The summary, (k) was given in the presence of the jury and the court. The summary, (l) was given in the presence of the jury and the court. The summary, (m) was given in the presence of the jury and the court. The summary, (n) was given in the presence of the jury and the court. The summary, (o) was given in the presence of the jury and the court. The summary, (p) was given in the presence of the jury and the court. The summary, (q) was given in the presence of the jury and the court. The summary, (r) was given in the presence of the jury and the court. The summary, (s) was given in the presence of the jury and the court. The summary, (t) was given in the presence of the jury and the court. The summary, (u) was given in the presence of the jury and the court. The summary, (v) was given in the presence of the jury and the court. The summary, (w) was given in the presence of the jury and the court. The summary, (x) was given in the presence of the jury and the court. The summary, (y) was given in the presence of the jury and the court. The summary, (z) was given in the presence of the jury and the court.

copartnerships, at 324 South Market street, Chicago, to continue to picket by walking back and forth in front of their premises, and advised said women not to be afraid but to continue their picketing, and that on divers other days, prior and subsequent to said date, at the offices of said defendant Unions in Chicago, he advised and counseled divers persons to continue to picket in front of the places of business of complainants, all in violation of the injunction; and that at divers times before and after said date he appeared in front of the places of business of some of the complainants, and counseled with and directed divers persons, who were then and there picketing, with respect to their activities in so picketing, and otherwise took an active part in directing said picketing activities and in urging and counseling members of the defendant Unions, and others, to violate said injunction by patrolling and picketing in front of the places of business of complainants or some of them.

Counsel for Barkan first contend that the findings are not supported by the evidence. We have carefully read the abstract of, and portions of, the certificate of evidence contained in the present transcript and cannot agree with the contention. While Barkan, who was connected with one of the local unions in some official capacity, admitted that he had notice and knowledge of the terms of the injunction the day after its issuance, he denied that he had knowingly or willfully violated it at any time. Complainants' evidence, however, clearly discloses that he, knowingly, willfully and repeatedly violated the injunction, while in force, at the times and in all the particulars mentioned in the court's findings.

It is next contended that the affidavit of Albert E. Hanley was insufficient to base an order of attachment upon, or to order a rule upon Barkan to show cause. It appears that Barkan was arrested on an attachment issued by the court and based

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, for the year ending June 30, 1900:

and the following is a list of the names of the persons who have been named in the above mentioned reports, and who are now in the hands of the Government:

[illegible]

It is not understood how the subject of Albert's
 death was investigated in view of the fact that, as
 stated above, he was killed in the street.
 The subject of the above is not known to the
 writer.

upon Manley's affidavit, dated April 11, 1924. It was clearly sufficient to base the issuance of such attachment. Furthermore, it does not appear that at any time in the trial court Barkan moved to quash the attachment or in any manner questioned the sufficiency of the affidavit or the propriety of his arrest. Furthermore, the rule on Barkan to show cause, etc. was based upon the affidavit of Ed Weiss, which, in our opinion, was amply sufficient to form the basis for the rule, and, before the order appealed from was entered, Barkan was afforded ample opportunity to meet the charges made against him. (See, Hymen Bros. v. International Ladies Garment Workers' Union, No. 29577, opinion by this appellate court, filed June 9, 1925; Hake v. People, 230 Ill. 174, 192.)

It is further contended that the trial court erred in certain rulings on evidence. We fail to find any such rulings which require a reversal of the order. Counsel argue that Barkan was prejudiced by the court's refusal to admit in evidence a certain time card, purporting to show the times when Barkan went to work for his employer and when he ceased working on a certain day. The objection to its admission was that it was not properly authenticated. The record discloses that the court at the time inspected the card, but neither the card nor a copy thereof is contained in this transcript, so the ruling should be presumed to have been correct. Furthermore, it has reference only to one day of Barkan's time, and does not cover other times when he was engaged, as charged and as the evidence shows, in repeated violations of the injunction.

And we do not think that there is any merit in the further contentions of counsel (1) that a sentence of imprisonment cannot properly be entered in a proceeding for civil contempt (see, to the contrary, Hake v. People, 230 Ill. 174, 192; Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, 203); and

upon which the following is based. It was clearly
intended to show the character of the evidence.
There is some question as to the value of the
evidence in this case. It is not clear whether
the testimony of the witness is of any value at all.
Furthermore, the fact that the witness is a
man of ill-reputation, and that he is a
relative of the person whose name is on the
list, is a serious objection to his testimony.
In view of these facts, it is not clear
whether the testimony of the witness is of any
value at all. It is possible that the
testimony of the witness is of some value,
but it is not clear.

It is further suggested that the fact that the
witness is a relative of the person whose
name is on the list is a serious objection
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but it is not clear. The fact that the
witness is a relative of the person whose
name is on the list is a serious objection
to his testimony. It is not clear whether
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at all. It is possible that the testimony
of the witness is of some value, but it
is not clear.

(2) that the sentence of 50 days in jail cannot be justified because of its severity. Under the facts and circumstances disclosed, we are unable to say that the court in fixing such sentence abused its discretion, or that the sentence is too severe. (American Cigar Co. v. Berger, 221 Ill. App. 332; People v. Muscato, 216 Ill. App. 512, 520.)

Finding no reversible error in the record the order of the Superior court is affirmed.

AFFIRMED.

Barnes, P. J., and Witch, J., concur.

30 - 29667

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

CONSOLIDATED APPEALS

FROM SUPERIOR COURT,

COOK COUNTY.

240 I.A. 639

ON APPEAL OF JENNIE LIEBERMAN,

Consolidated for hearing on
similar appeals of FREIDA REIKER,
No. 29668, and LENA MOVITZ,
No. 29669.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal, Jennie Lieberman seeks to reverse an order of the Superior court, entered April 5, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924, and committing her to jail for twenty (20) days, unless sooner discharged by law, and also imposing upon her a fine of \$200. - she to be confined in jail until said fine and the costs of the proceeding be paid, or until she be discharged according to law. On the same day similar orders were entered as to Freida Reiker and Lena Movitz (except that the former was sentenced to 30 days in jail), separate appeals were perfected by them, and, by agreement, the three appeals were consolidated for hearing in this appellate court.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartnerships, engaged in the business of making and selling ladies' dresses and garments on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers;

that the defendant Union and Locals, Nos. 5, 18, 59, 81 and 100, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents or members of the various local organizations; and that on February 27, 1934, said local organizations instituted a general strike of its members, some of whom were employed by complainants and other similar concerns located nearby, and defendants had caused and were causing the premises of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be threatened, and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc.

On March 4, 1934, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or intimidating persons, employed by or going to and from the premises of complainants; (e) from addressing or referring to any of complainants' employees as "scabs" or applying to them other offensive epithets; and (f) from advising, encouraging or assisting in the doing of any such things.

On March 26, 1934, on complainants' motion, the court, after considering the affidavit of Albert E. Manley, other affidavits filed, and complainants' sworn bill, ordered that writs of attachment issue forthwith to bring before the court "Anna Roe, May Roe and Bertha Roe, whose true names are unknown, to be pointed out by Albert E. Manley, * * to answer for the alleged contempt of

this court for the alleged violation of the injunction ordered by this court in this cause." In Manley's affidavit, sworn to on March 26th, he states in substance that he is a deputy sheriff of Cook county; that on the morning of March 21st he served a printed copy of the injunction writ on each of three women "whose names are unknown to me, but whose faces have become familiar through my having seen them constantly in front of 224 South Market street, Chicago, in which building is located the firm of C. H. Lowenthal & Co., one of the complainants;" that he advised these three women that the injunction restrained them from picketing and patrolling in front of the premises, but that they refused to take the copy of the injunction and continued to picket and patrol; that at various times he has seen them approach employees of said Lowenthal & Co. and "threaten them against working for said Lowenthal and assault them;" that he has tried to ascertain their names and addresses but they refused to give them; that he has seen them picketing in front of said premises every day since he served them with said writ; and that at times he has seen them approach employees of said Lowenthal & Co., threaten them in loud tones and call them "scabs," and at times strike and beat them. Shortly after the entry of the order the three respondents were arrested and their true names ascertained by the court. The record does not disclose that any of them, at any time thereafter, moved to quash the writs or in any manner questioned the jurisdiction of the court over their persons. On April 1, 1924, there was a hearing, at which all respondents were present and represented by counsel. Complainants introduced in evidence, without objection, Manley's affidavit and those of four other persons, and a printed copy of the injunction writ. Nine witnesses also testified for them and most of them were cross-examined by counsel for respondents. None of the respondents were called to testify in defense of the charges made in the affidavits.

Following the hearing the orders appealed from were

entered, in which the court, in the order as to Jennie Lieberman, after reciting the prior proceedings made numerous findings. In the orders as to the other two respondents the findings are very similar. As to Jennie Lieberman the court found in substance that she was served with a copy of the injunction on March 21, 1924, and that on that day, and subsequently, copies thereof were posted on complainants' premises in full view of those passing; that she had been, and is now, a dressmaker and a member of the defendant Union; and that she willfully violated said injunction in the following particulars: (a) in that, after she had been served with a copy and had knowledge of the issuance of the injunction she picketed and patrolled, from day to day, in front of and along the premises of C. H. Lowenthal & Co; (b) in that she did this, alone or in company with others, especially between the hours of 8 and 9 a. m. and 3:30 and 5 p. m., from March 21st to March 26th, inclusive, excepting Sunday, and interfered with employees of said firm when entering or leaving said premises, and called them "scabs" and other vile names, and threatened them against returning to work for said firm; (c) in that she, in company with others, early in the morning of March 21st, approached one Justine Teus, as the latter as an employee of said Lowenthal & Co., was about to enter said premises, and struck and beat her, and said respondent was then and there arrested, taken to a police station, released on bail, and immediately thereafter returned and continued her said picketing in front of and near said premises; (d) in that she, in company with others, on the morning of March 26th, committed similar acts as to Julia De Rosa, an employee of said Lowenthal & Co., and after another arrest returned and continued her picketing; and (e) in that she appeared in court on March 28th, after being arrested under said attachment writ, and asked and obtained her release on her own recognizance upon the promise that she would desist thereafter from said picketing and further violations of the injunction, yet subsequent to her said release,

[illegible]

and notwithstanding her said premise, she continued to picket alone or with others in front of said premises. In the order as to Frieda Reiker there is the additional finding that she, in company with respondents Lieberman and Movitz, on the afternoon of March 25th, picketed in front of said premises, and while so doing struck one Ray Johnston, an employe of said Lowenthal & Co., on the chest and back, as said Johnston was leaving said premises, whereupon said Reiker was arrested, released on bail and thereafter returned and continued her said picketing, etc.

After reviewing the abstract of the testimony introduced on the hearing it is apparent to us that all of the court's findings, in said three orders appealed from, are amply sustained by the evidence. Counsel for the several appellants contend that the affidavits of Manley and others, which formed the basis for the issuance of the attachment writs, were insufficient, and that the trial court did not have jurisdiction of the subject matter or of respondents' persons at the time of the hearing. The same contention was made in the similar Galich case, No. 29661, opinion this day filed, and, for reasons therein stated, was decided adversely to said Galich. In the present cases, as in the Galich case, none of the respondents, after their arrest under the attachment writs, moved to quash the writs or in any manner questioned the court's jurisdiction over their persons. They treated the order for said writs, supported by the affidavits, as a rule upon them to show cause why they should not be punished for contempt for violating the injunction, and, on the subsequent hearing on the merits, made no objection to the introduction in evidence of said affidavits, or questioned the court's jurisdiction over them. We think it clear that the court had jurisdiction of the subject matter and of their

persons, that the affidavits were amply sufficient to advise them of the charges they were called upon to meet, that at the hearing they had full opportunity to present their defense, if any they had, to said charges, and that none of their rights was infringed or denied. (See Franklin Union v. People, 220 Ill. 355, 366; Hake v. People, 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367; Cater v. People, 192 Ill. 473, 473.)

And there is no merit in counsels' further contentions (1) that certain incompetent evidence was admitted as to certain of the respondents which was so prejudicial to them as to require a reversal; (2) that the punishments imposed were unusual and excessive; (3) that the punishments were made so severe because of the court's findings that respondents had broken their promises not to engage in further picketing, etc., after their arrests on the attachment writs and their release on their own recognizances; and (4) that "unconditional" sentences to imprisonment in a proceeding for civil or remedial contempt are improper and erroneous. As to the last contention it is sufficient to cite the cases of Hake v. People, 230 Ill. 174, 196, and Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, 205, where in such proceedings punishments by imprisonment and fine were sustained. We are at loss to understand the use of the word "unconditional" in this connection. Respondents were ordered imprisoned for the number of days mentioned "or until discharged according to law," as was proper. As to contentions 2 and 3, we are unable to say, under all the facts and circumstances disclosed, that the punishments are excessive. (American Cigar Co. v. Berger, 221 Ill. App. 332, 337; Hoaffken v. Belleville Trades & Labor Assembly, 229 Ill. App. 28, 35); or that in their imposition there was any abuse of the discretion vested in the trial court. (Ash-Madden-Rae Co. v.

International Ladies' Garment Workers' Union, 290 Ill. 301, 306.

Finding no reversible error in the record the order of the Superior court, entered April 5, 1924, as to Jennie Lieberman, is affirmed.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

35 - 29670

HYMAN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION et al.,
Defendants.

IN RE CONTEMPT PROCEEDINGS AGAINST
ALMA JONES,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 640

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

On April 5, 1924, the Superior court entered an order adjudging Alma Jones guilty of contempt of court for violating an injunction against picketing, etc., committing her to jail for fifteen (15) days, or until discharged according to law, and also assessing against her a fine of \$200. - she to be confined in jail until said fine and the costs of the proceeding be paid, or until she be discharged according to law. By this appeal she seeks to reverse the order.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartnerships, engaged in the business of making and selling ladies' dresses and garments on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers; that the defendant Union and locals, Nos. 5, 16, 59, 81 and 100, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents or members of the various local organizations; and that on February 27, 1924, said local organizations instituted a general strike

of its members, some of whom were employed by complainants and other similar concerns located nearby, and defendants had caused and were causing the premises of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be threatened, and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc.

On March 4, 1934, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or inducing persons, employed by complainants, not to go to or from said premises; (e) from addressing or referring to any of complainants' employees as "scabs" or applying to them other offensive epithets; and (f) from advising, encouraging or assisting in the doing of any such things.

On March 25, 1934, on motion of complainants, the court, after considering the affidavit of Albert E. Hanley, other affidavits and complainants' sworn bill, ordered that a writ of attachment issue forthwith to bring before the court "Mary Ree (whose true name is unknown) to be pointed out by Albert E. Hanley, * * to answer for the contempt of this court for the alleged violation of the injunction ordered by this court." In Hanley's affidavit, sworn to on March 25th, it is stated in substance that he is a deputy sheriff, assigned to strike duty on South Market street, Chicago; that about noon on March 21st, he saw one Sherer, another

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On March 22, 1914, an order of remission, the words
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deputy, hand a printed copy of the injunction writ "to a colored striker whose face has become familiar to me, and whom I could pick out on sight, but whose name and address is unknown;" and that he has seen said striker picketing and patrolling from day to day in front of the premises of complainants between the hours of 8 a. m. and 3 p. m., before and since the serving of said injunction writ. Shortly after the entry of the order, appellant was arrested under said writ and brought into court, and subsequently she filed an answer to the rule, subscribed by her as Alma Jones but not sworn to, in the first paragraph of which she alleges that the same is made "in obedience to the rule entered on her to show cause why she should not be adjudged guilty of contempt for violating the order of injunction." It does not appear that she ever, either personally or by counsel, moved to quash the writ of attachment on any ground, although, after making certain statements on her answer as to her arrest and what happened in court when she was brought before the judge, she says: "Therefore, this respondent moves the court for an order quashing the writ and discharging her from custody." In her answer, also, she states that she knows of her "being charged in general terms with having picketed," denies that she addressed insulting language or opprobrious epithets to any of complainants' employees, and alleges that she has done nothing that can be construed as a violation of the injunctive order "unless her mere presence in the vicinity of the places of business of complainants can be construed as a violation thereof."

On April 1, 1924, there was a hearing at which appellant and her counsel were present. Complainants introduced in evidence Manley's affidavit and two other affidavits, and five witnesses testified in their behalf. Appellant's answer to the rule was read to the court, and she was called as a witness in her own behalf. She testified that she was a garment worker and, prior to the time the strike was called, she had been employed by a firm on South

Market street; that she had gone out on the strike and had not returned to her work. She admitted that since the strike she frequently and in the mornings had picketed in front of the premises of Stein and Seiden, one of the complainants, employing many colored garment workers, and urged many of these employees to go out on the strike. She denied ever having threatened any of them with bodily harm in case they did not, or having addressed to them offensive epithets. She stated on cross-examination that, notwithstanding the injunction she felt it was her duty as a striker to picket and that she intended to picket.

At the conclusion of the hearing the order appealed from was entered, in which, after reciting the prior proceedings, the court found in substance that on March 21st respondent had been handed a printed copy of the injunction writ; that then and thereafter there was posted on complainants' premises, within view of those passing, other printed copies; that prior to and since the issuance of the writ respondent was and is now a member of the defendant union; that after the writ was served upon her she willfully violated the injunction, (a) in that on various days and at various hours she patrolled and picketed in front of the premises of Stein and Seiden, and especially on March 21st, 22nd and 24th, 1934, between the hours of 8 and 9 a. m., and (b) in that, while so patrolling and picketing, she interfered with their employees as they were entering their place of employment, and called them "scabs" and other opprobrious names, and attempted to talk to them and urge them not to go to work; and that while testifying on the hearing "she stated that she intended to continue to picket and patrol in front of the premises."

Counsel for appellant contend that the affidavits, which were the basis for the issuance of the attachment writ, were insufficient and that the writ should have been quashed; and further

that the court did not have jurisdiction of the person of respondent at the time of the hearing and, hence, the order appealed from should be reversed. In our opinion both contentions are without merit. Under the conditions existing at the time of the issuance of the attachment writ the affidavits clearly were sufficient to form the basis for its issuance, and to arrest "Mary Ree," - respondent's real name not then being known. Furthermore, after her arrest, neither respondent (released on her own recognizance) nor her counsel made any motion to quash the attachment writ, but treated the order therefor, supported by said affidavits, as a rule upon her to show cause why she should not be punished for contempt for violating the injunction, and said affidavits clearly were sufficient to warrant the issuance of such a rule. (Hake v. People, 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367.) And by her filing an answer to the rule, on the merits, she waived all objections to the court's jurisdiction over her person. (MacKenzie v. MacKenzie, 141 Ill. App. 126, 132; aff'd, 238 Ill. 616, 623; Nicholas v. People, 165 Ill. 502, 504; Louisville and Nashville R. Co. v. Industrial Board, 282 Ill. 136, 141.) And in said answer she states that she has knowledge of the charges, in a general way, which she is called upon to meet, and it clearly appears that afterwards on the hearing she was given full opportunity to meet them. (Hake v. People, supra; Hymen Bros. v. International Ladies' Garment Workers' Union, No. 29,577, opinion of this appellate court, filed June 9, 1925.)

Counsel state that "the court erred in punishing her for her intention to offend instead of limiting the sentence to past offenses," and, apparently, reach this conclusion because of one of the court's findings that on the hearing "she stated that she intended to continue to picket and patrol in front of the premises."

No such conclusion can properly be deduced from such finding or the entire order. That she had the intention, before she was arrested, to continue to picket and patrol, notwithstanding the injunction, is apparent from the evidence, and particularly from the testimony of complainants' witness, Sherer, to the effect that when, on March 21st, he handed her a printed copy of the injunction writ, explained its contents and told her to stop picketing, "she said she didn't care."

As to counsels' further contention that a sentence of imprisonment for a civil contempt is improper and erroneous, it is sufficient to say that the decisions of our Supreme Court are to the contrary. (Hake v. People, 230 Ill. 174, 196; Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, 205.) And we cannot hold, as urged, that the court, under all the facts and circumstances in evidence, abused its discretion in sentencing respondent to jail for 15 days and also imposing a fine of \$200 upon her, or that the punishment imposed was excessive. (Hoeffken v. Belleville Trades & Labor Assembly, 229 Ill. App. 28, 35; Ash-Madden-Rog Co. v. International Ladies Garment Workers' Union, 290 Ill. 301, 306; American Cigar Co. v. Berger, 281 Ill. App. 332, 337.)

Finding no reversible error in the record the order of the Superior court is affirmed.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

It is a very common mistake to suppose that the only way to get the most out of a book is to read it straight through from beginning to end. This is not necessarily the best method. In fact, it is often better to read a book in a more haphazard way, jumping from one chapter to another, or even to one of the footnotes. This allows you to get a better sense of the overall structure of the book, and to see how the different parts fit together. It also allows you to focus on the parts of the book that are most interesting to you, and to skip over the parts that are less so. In short, reading a book in a more flexible way can be a more effective way to get the most out of it.

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 640

IN THE MATTER OF THE CONTEMPT
PROCEEDINGS AGAINST CLARA CABINE,
Appellant.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Clara Cabine seeks to reverse an order of the Superior court of Cook county, entered April 5, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, etc., assessing a fine of \$125 against her, together with costs, and ordering her to be confined in jail until said fine and costs be paid or until she be discharged according to law.

In complainants' sworn bill, filed March 3, 1924, it is alleged in substance that they are corporations or copartnerships, engaged in the business of making and selling ladies' dresses and skirts on South Market street, near Jackson boulevard, Chicago, where they employ numerous garment workers; that the defendant Union and locals 5, 18, 59, 81 and 100, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents, representatives or members of the various local organizations; and that on February 27, 1924, said local organizations instituted a general strike of its members, some of whom were employed by complainants and other similar concerns located nearby, and defendants had caused and were causing the premises

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of complainants and the other concerns to be picketed, their employees who did not go out on the strike to be threatened, and the sidewalks and streets near said premises to become so congested as to prevent customers from entering the same, etc. On March 4, 1934, following the prayer of the bill, the court issued a temporary injunction which, among other things, restrained the defendants, and all associations, unions and other persons, aiding, assisting or conspiring with them and having knowledge of the injunction, (a) from picketing or maintaining pickets at or near complainants' premises; (b) from patrolling or congregating in front of or in the vicinity of said premises in furtherance of picketing; (c) from soliciting or inducing persons, or attempting to do so, by threats, force, violence or coercion, not to enter into, or continue in, complainants' employ; (d) from assaulting, menacing, threatening or inducing persons, employed by complainants, not to go to or from said premises; (e) from injuring or attempting to injure complainants' property; and (f) from advising, encouraging or assisting in the doing of any such things.

On March 13, 1934, on motion of complainants, the court, after considering the affidavits of Albert B. Manley and others (dated March 12, 1934) and the bill of complaint, ordered that writs of attachment issue forthwith to bring into court Clara Sabins (appellant and a defendant named in complainants' bill) and two other women "to answer for the alleged violation of the injunction ordered by this court." Some time later appellant was brought into court and subsequently she filed an answer to the rule, signed and sworn to on March 18, 1934, in the first paragraph of which she alleges that the answer is made "in obedience to the rule entered on her to show cause why she should not be adjudged guilty of contempt for violating the order of injunction." It does not

appear that she ever, in person or by counsel, moved the court to quash the writ of attachment issued against her on any ground, although, after making certain statements as to what happened in court when she was brought before the judge, her answer contains the words, "therefore this respondent moves the court for an order quashing said writ and discharging her from custody." In her answer, also, she states that she knows that she has been charged with violations of an injunction against picketing; that she does not know exactly what the word means, but that, "if by picketing is meant that she was present in the vicinity of the places of business of complainants, she admits she was in the proximity;" that she did not address employees of complainants with insulting language or opprobrious epithets; and that she did not violate said injunction "unless her mere presence in the vicinity of complainants' places of business can be construed as a violation thereof."

On March 26, 1924, there was a hearing in open court at which appellant and her counsel were present. Complainants introduced in evidence the said affidavit of Albert E. Manley, and the affidavits of eleven other persons. And three witnesses testified for complainants, all being cross-examined by appellant's counsel. Appellant testified as a witness in her own behalf, and her answer to the rule, above referred to, was read in evidence. At the conclusion of the hearing the court entered the order appealed from, in which, after reciting the filing of complainants' bill and the issuance of the injunction, the court found in substance that Clara Gabins was served with a copy of the injunction writ on March 6, 1924; that she was by occupation a dressmaker, and was a member of the defendant Union, both before and after the issuance of the injunction; that from March 6th to March 12th, 1924, inclusive, she willfully violated the injunction by repeatedly

patrolling and picketing in front of and along the place of business of Hymen Brothers, a corporation, one of the complainants, and by approaching its employees and in a boisterous manner admonishing and instructing them against returning to work for it; and that on or about March 6, 1934, she approached George Wolf, an employee of said Hymen Brothers, and told him that one Sam Goldstein, also an employee of that corporation, had better keep off Market street, on which street he was employed and said corporation located, or he would be harmed or something would happen to him, and that on or about March 8, 1934, she approached said Goldstein and made substantially the same statements to him, and that in making said approaches and statements she willfully violated said injunction.

Counsel for appellant first contend that the evidence is insufficient to support any of the court's findings. We deem it unnecessary to set forth in detail complainants' evidence, as disclosed in the many affidavits introduced by them and in the testimony of their witnesses, or to set forth the somewhat contrary testimony of appellant. Suffice it to say that after a careful reading of the affidavits and all of the testimony, as set forth in the abstract, we are of the opinion that all the findings of the court are sustained by a great preponderance of the evidence.

Appellant's counsel also contend that the court did not properly acquire jurisdiction of her person. The argument is that the Hanley affidavit and the other affidavits (which were dated March 12th and which the court considered on the motion for the issuance of the attachment against her) were insufficient to form a basis for the attachment, and hence it was issued improperly and should have been quashed. We cannot agree with the contention or argument. In our opinion the affidavits were sufficient to warrant the issuance of the attachment. Furthermore, no motion was made at any time in the trial court to quash the attachment

on any ground, but the order therefor, supported by said affidavits, was treated by appellant and her counsel as a rule on her to show cause why she should not be punished for contempt for violating the injunction, and the affidavits clearly were sufficient for that purpose. (Hake v. People, 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367; Flannery v. People, 225 Ill. 62, 68.) By her answer to such rule it appears that she knew in a general way the charges she was called upon to meet, and subsequently she was given ample opportunity to meet them. (Hymen Bros. v. International Ladies' Garment Workers' Union, No. 29577, opinion of this appellate court, filed June 9, 1925.) Furthermore, by filing an answer to such rule, on the merits, she waived all objections to the jurisdiction of the court over her person. (MacKenzie v. MacKenzie, 141 Ill. App. 126, 132; affirmed, 238 Ill. 616, 623; Nicholas v. People, 165 Ill. 502, 504.)

Appellant's counsel further contend that the fine of \$125 imposed upon her is excessive. Under the facts and circumstances disclosed by the evidence we cannot say that it is excessive. In fixing the punishment at such a fine there was no abuse of the court's discretion. (American Cigar Co. v. Berger, 221 Ill. App. 299; Same v. Same, 221 Ill. App. 332.)

The order of the Superior court is affirmed.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS OF
THE INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

ON APPEAL OF KATE MILLER.
Appellant.

Consolidated for hearing on similar
appeals of ELEANOR SADOWSKA,
No. 29680, and ALBINA CAG, No. 29691.

Consolidated appeals

From Superior Court

of Cook County.

240 I.A. 640

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Kate Miller seeks to reverse an order of the Superior court of Cook county, entered May 29, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued on March 17, 1924, and committing her to jail for sixty (60) days, unless sooner discharged by law, and also imposing upon her a fine of \$250, - she to be confined in jail, not exceeding four months, until the fine be paid, or until she be discharged according to law. Similar orders were entered as to Eleanor Sadowska and Albina Cag, separate appeals were perfected, and, by agreement, the three appeals were consolidated for hearing in this appellate court.

In complainants' sworn bill, filed March 6, 1924, it is alleged in substance that they are corporations or copartnerships, engaged in the business of making and selling ladies' dresses and garments, and located near the corner of West Adams and South Market streets, Chicago, and in a district where many makers of such garments have their places of business; that complainants

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employ numerous garment workers; that the defendant Union and Locals Nos. 8, 18, 54, 59, 81, 100 and 104, are voluntary associations of which many garment workers are members; that the other defendants are officers, agents or members of said local organizations; that the defendant, Joint Board, etc., represents and manages the conduct and affairs of said local organizations; that about February 27, 1924, said local organizations instituted a general strike of its members, some of which were employed by complainants and other similar concerns, and caused the premises of complainants and other concerns to be picketed and various of their employees to be threatened with bodily harm in case they did not join in said strike, etc.

On March 7, 1924, the court issued a temporary injunction which, among other things, restrained the defendants, and all officers, agents or members of said Joint Board and of said local organizations, and all other associations and persons, aiding, assisting or conspiring with them and having knowledge of said injunction, (a) from picketing or maintaining pickets at or near complainants' premises, or along the routes used by persons in going to or from said premises, or at or near the homes of any of complainants' employees; (b) from watching, following, stopping, assaulting, beating, threatening, menacing, molesting or interfering with any of complainants' employees, or persons seeking to enter the employment of any of the complainants, or persons doing business or seeking to do business with any of them; (c) from calling, addressing or applying to any of complainants' employees any profane, insulting or humiliating epithet, name or term; (d) from soliciting or inducing any employee of complainants to quit their employment; and (e) from recommending, encouraging or assisting in the doing of any such acts.

On May 21, 1924, on complainants' motion, the court,

after considering the affidavits of Robert Logan, Julian J. Sullivan, Lilly Winters and Patrick Moran, (dated either May 19th or May 20th) and after said three respondents, Kate Miller, Eleanor Sadlowska and Albina Gag, had entered their appearances by counsel in open court, ordered that rules be entered on said respondents to show cause why they should not be punished for contempt of court for violating said injunction, as charged in said affidavits, on or before 10 o'clock on the following morning. The record does not disclose that any of the respondents filed answers to the rules, but on May 22, 1924, there was a hearing in open court, at which all three respondents were present and represented by counsel. Complainants introduced in evidence said four affidavits, and presented the four affiants as witnesses, as well as one Ida Abrams, and they were examined and cross-examined at length. Kate Miller and Eleanor Sadlowska testified as witnesses in their own behalf, but Albina Gag, although present, did not testify, after opportunity given her so to do.

Following the hearing the orders appealed from were entered, in which the court, after reciting the prior proceedings, found as to Kate Miller that on March 8, 1924, she was, ever since has been, and is now a member of Local 100, one of the local organizations; that on or before May 17, 1924, she had notice of said injunction and of the contents thereof; that on May 17th she violated the injunction, "in that she did on said day in conjunction with others, with great force and violence, assault and beat said Lilly Winters, who was then and there an employe of the Francine Frock Co., one of complainants, while said Lily Winters was on her way to her place of employment, and did strike her on the head, knocking her to the ground and rendering her unconscious." Similar findings, in almost identical language, appear in the orders concerning Eleanor Sadlowska and Albina Gag.

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It appears from the affidavit of Lily Sinters, and from her testimony in open court, that she resided on Oak avenue in Evanston, Illinois, and was employed by the Francine Frock Co. as forewoman; that early on Saturday morning, May 17, 1924, she left her residence and walked east on Davis street, intending to take the elevated railroad to go to her place of employment; that just as she reached the corner of Benson avenue and was about under the viaduct of the railroad three women (whom she did not know but afterwards identified as being the three respondents) approached her, and one of them (Albina Gag), carrying a broom-stick covered with newspaper, and without previous conversation, hit her with said stick over the head and knocked her down, rendering her temporarily unconscious; and that she sustained painful injuries to her head, arm and shoulder, causing her absence from her place of employment for several days. It appears from the affidavits and testimony of Julian J. Sullivan (a police officer) and Robert Logan, that early on said morning, being on Davis street near said corner, they heard screams, ran to the corner, found Mrs. Sinters lying on the sidewalk in an unconscious condition, noticed three women running rapidly north on Benson avenue and pursued them; that Sullivan arrested one, who later gave her name as Albina Gag; that shortly thereafter the witnesses found the other two attempting to hide in an alley running into Church street, the first street north of Davis street; that the other two women also were arrested and taken to the police station where they gave their names as Kate Miller and Eleanor Badlewaka; and that the witness, Logan, recognized the two as those whom he first saw running away from said corner. It appears from the affidavit and testimony of Patrick Moran (an investigator employed by complainants after the institution of the strike) that he had been in the strike district and near complainants' premises every working day since

March 8th; that between that day and March 15th, he repeatedly saw all three respondents picketing and patrolling back and forth in front of the premises of complainants and others; that he saw them at the Evanston police station on May 17th, and that each then informed him that they were striking garment workers and members of said local union, No. 100; and that after March 8th copies of the injunction writ were posted conspicuously at the front entrance to the places of business of complainants and others, and could easily be seen from the sidewalk. Moran testified to further facts, showing clearly that all three respondents had knowledge of the injunction shortly after its issuance; that on the morning of May 17th, after they had been taken to the Evanston police station, he heard respondent Miller telephoning to one Rappaport to the effect that respondents had been arrested and were in trouble, and further saying, "You know what we were out here for; * * get us out of here;" and that during the afternoon respondents were released on bail. The testimony of Kate Miller and Eleanor Sadlewska was that they had left their homes in Chicago very early and had gone separately on personal business to Evanston; that they were not acquainted with one another, though members of local Union No. 100; but their statements, as to why they, in company with Albina Ceg, happened to be at the same corner at the same time and why, after the assault on Mrs. Winters, they all attempted to run away, were unconvincing. Kate Miller further testified that after respondents had been taken to the police station she telephoned to the secretary of local union No. 100, Mr. Rappaport, saying, "We are under arrest * * send some one to get us out;" that later bail bonds were signed and all three respondents were released; that she telephoned Rappaport because he was generally at the union headquarters and because he would get her out; and that "they tell us when we get into trouble to call Mr. Rappaport." Eleanor Sadlewska further testified that after

her arrival in Evanston that morning she met Albina Cag at said corner and had a conversation with her, and after going a few steps away she turned around and saw her and Mrs. Winters fighting and then she ran away, because she was afraid of a "bunch of negroes," and was afterwards arrested "in a garage in a back yard."

Counsel for appellants contend that the findings of the court, as to Kate Miller and Eleanor Sadlowaka, that they committed any assault and battery upon Mrs. Winters in violation of the injunction, are not supported by the evidence. We cannot agree. It sufficiently appears that all three respondents acted in concert in making an assault upon Mrs. Winters, who was employed in an important position by one of the complainants and who that morning was on the way to her place of employment. While it appears that the blow, which knocked Mrs. Winters down and rendered her temporarily unconscious and unable for a considerable time to perform the duties of her position, was struck by Albina Cag, the latter's act, under the facts and circumstances in evidence, is to be considered as the act of all three respondents, and for a purpose clearly apparent. (Christensen v. People, 114 Ill. App. 40, 72.) And in our opinion there is no merit in counsels' further contention that the findings of the court, that all three respondents violated the injunction of the terms of which they had knowledge, are not sufficiently supported by the evidence.

Counsel further contend that the affidavits, which formed the basis of the entry of the court's rule on the respondents to show cause, etc., do not charge them specifically with any intent to violate the injunction, nor do they show that any of complainants was prejudiced or damaged by the acts of respondents. These contentions are also without merit. The intent of respondents to violate the injunction can clearly be inferred from the facts as stated. It was not necessary to specifically allege such

intent, and they were sufficiently advised of the charges they were called upon to meet and afterwards were afforded ample opportunity of meeting them. (Hake v. People, 230 Ill. 174, 192; O'Brien v. People, 216 Ill. 354, 367; Hymen Bros. v. International Ladies' Garment Workers' Union, No. 29577, opinion of this appellate court, filed June 9, 1925.) And the Francine Frock Co., one of the complainants, clearly suffered damages in that by respondents' acts it was deprived of the services for a considerable time of Mrs. Finters, its forewoman, at a period when many garment workers were out on a strike.

And there is no force in counsels' further contention that a sentence of imprisonment cannot properly be entered in a proceeding for civil contempt, such as this was. (Hake v. People, 230 Ill. 174, 196; Rothschild & Co. v. Steger Piano Co., 256 Ill. 196, 205.) And, under the facts and circumstances shown, we cannot say that the trial court abused its discretion in ordering each respondent to be imprisoned for the period mentioned and also to pay the fine mentioned. (American Cigar Co. v. Berger, 221 Ill. App. 332; People v. Muszatto, 216 Ill. App. 519, 529.)

The order of the Superior Court appealed from, as to the respondent Kate Miller, should be affirmed, and it is so ordered.

AFFIRMED.

Barnes, P. J., and Fitch, J., concur.

infant, and they were well educated children of the same family.

When asked what the children were educated in

they said that they were educated in the common school.

When asked what the children were educated in

they said that they were educated in the common school.

When asked what the children were educated in

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they said that they were educated in the common school.

When asked what the children were educated in

20 - 29606

4908a

ROTH-WORSKY COMPANY,
a Corporation,

Appellee,

vs.

CHICAGO JOINT BOARD et al.

On Appeal in the Matter of
May Boneynski, Appellant,
Appellants.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

240 I.A. 640

PER CURIAM.

This is one of four appeals from an order of the Circuit court imposing a punishment on appellants for violating an injunction of that court. This case was tried with that of Eleanor Sadlowaki, and the facts in this case are the same as in that case. The cases were consolidated and heard in this court upon the same record, abstracts and briefs.

For the reasons stated in the opinion filed in that case (Gen. No. 29605), the order of the Circuit court is affirmed.

AFFIRMED.

NO. 1000

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21 - 29607

ROTH-WORSKY COMPANY,
a Corporation,

Appellee,

vs.

CHICAGO JOINT BOARD et al.

On Appeal in the Matter of
Max Novak, Appellant,
Appellants.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

240 I.A. 641

PER CURIAM.

This is an appeal from an order of the Circuit court imposing a punishment on appellant for contempt of court in violating an injunction. The order is based upon the same evidence as the case against Eleanor Sadlowksi, after a hearing upon a petition, affidavits, rule to show cause and answer similar to those in her case. The cases were heard together in the lower court, and by agreement, the separate appeals were consolidated in this court and heard upon the same record, abstracts and briefs.

For the reasons stated in the opinion filed in the case of Eleanor Sadlowksi (Gen. No. 29605), the order of the Circuit court is affirmed.

AFFIRMED.

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22 - 29608

4910a

ROTH-WORSEY COMPANY,
a Corporation, Appellee,

vs.

CHICAGO JOINT BOARD et al.

On Appeal in the Matter of
Catherine Koppa, Appellant,
Appellants.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

240 I.A. 641

PER CURIAM.

This is one of four appeals from an order of the Circuit court imposing a punishment on appellants for violating an injunction of that court. This case was tried with that of Eleanor Sadlowski, and the facts in this case are the same as in that case. The cases were consolidated and heard in this court upon the same record, abstracts and briefs.

For the reasons stated in the opinion filed in that case (Gen. No. 29605), the order of the Circuit court is affirmed.

AFFIRMED.

[Faint handwritten text, possibly a signature or date]

NO. 1011

TO THE HONORABLE
THE SECRETARY OF THE

U. S. DEPARTMENT OF AGRICULTURE

WASHINGTON, D. C.
DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.
DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.
DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

THE SECRETARY

THIS IS ONE OF THE MANY THINGS THAT ARE BEING
DONE BY THE DEPARTMENT OF AGRICULTURE TO
IMPROVE THE CONDITION OF THE COUNTRY.
THE DEPARTMENT OF AGRICULTURE IS THE
LARGEST AND MOST IMPORTANT OF THE
DEPARTMENTS OF THE GOVERNMENT.
IT IS THE DEPARTMENT THAT IS
RESPONSIBLE FOR THE WELFARE OF THE
COUNTRY AND THE PEOPLE.
IT IS THE DEPARTMENT THAT IS
RESPONSIBLE FOR THE PROGRESS OF THE
COUNTRY AND THE PEOPLE.
IT IS THE DEPARTMENT THAT IS
RESPONSIBLE FOR THE FUTURE OF THE
COUNTRY AND THE PEOPLE.

26 - 29663

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

ON APPEAL OF ISIDORE KREEGER,
Appellant.

PER CURIAM.

By this appeal, consolidated for hearing with No. 29661, Isidore Kreeger seeks to reverse an order of the Superior court of Cook County, entered April 5, 1924, adjudging him guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924; imposing upon him a fine of \$175, together with the costs of the proceeding; and ordering that he be confined in jail until payment of the fine and costs, or until discharged according to law.

For the reasons stated in the opinion in case No. 29661, this day filed, the order of the Superior court is affirmed.

AFFIRMED.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 641

27 - 29664

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

ON APPEAL OF BESSIE KATZ,
Appellant.

240 I.A. 641

PER CURIAM.

By this appeal, consolidated for hearing with No. 29661, Bessie Katz seeks to reverse an order of the Superior court of Cook county, entered April 5, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924; imposing upon her a fine of \$200, together with the costs of the proceeding; and ordering that she be confined in jail until payment of the fine and costs, or until discharged according to law.

For the reasons stated in the opinion in case No. 29661, this day filed, the order of the Superior court is affirmed.

AFFIRMED.

491 PH

1910 - 11

RECEIVED BY THE SECRETARY OF THE
TREASURY DEPARTMENT
WASHINGTON, D. C.

PAID TO THE
TREASURY DEPARTMENT
WASHINGTON, D. C.

RECEIVED BY THE SECRETARY OF THE
TREASURY DEPARTMENT
WASHINGTON, D. C.

PAID TO THE SECRETARY OF THE
TREASURY DEPARTMENT

1110.1042

THE SECRETARY

The first report, transmitted by the Secretary of the Treasury, shows a balance of \$1,000,000,000, which is the amount of the Treasury's assets, less the amount of its liabilities, as of the first day of January, 1910. This balance is the result of the operations of the Treasury during the year 1909, and it is the first time since 1890 that the Treasury has shown a surplus. The balance is the result of the operations of the Treasury during the year 1909, and it is the first time since 1890 that the Treasury has shown a surplus. The balance is the result of the operations of the Treasury during the year 1909, and it is the first time since 1890 that the Treasury has shown a surplus.

RECEIVED

29 - 29666

HYMEN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

ON APPEAL OF SAM DORF,
Appellant.

240 I.A. 641

PER CURIAM.

By this appeal, consolidated for hearing with No. 29661, Sam Dorf seeks to reverse an order of the Superior court of Cook county, entered April 5, 1924, adjudging him guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924; imposing upon him a fine of \$175, together with the costs of the proceeding; and ordering that he be confined in jail until payment of the fine and costs or until discharged according to law.

For the reasons stated in the opinion in case No. 29661, this day filed, the order of the Superior court is affirmed.

AFFIRMED.

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Page 1

THE SECRETARY OF THE BOARD OF
DIRECTORS

MEMORANDUM

TO THE BOARD OF DIRECTORS

FROM THE SECRETARY

RE: [Illegible text]

2401 A. 641

IT IS THE POLICY OF THE BOARD

[Illegible text]

It is the policy of the Board of Directors to maintain a high standard of efficiency and to ensure that the company's resources are used in the most effective manner possible. The Board is committed to the long-term success of the company and to the satisfaction of its shareholders. It is the responsibility of the management to implement the policies and decisions of the Board and to report on the company's performance to the shareholders.

Very respectfully,
[Illegible signature]

cc: The Secretary of the Board of Directors

cc: The President of the Company

cc: The Board of Directors

[Illegible text]

HYMAN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

ON APPEAL OF FREIDA REIKER,
Appellant.

240 I.A. 642

PER CURIAM.

By this appeal, consolidated for hearing with No. 29667, Freida Reiker seeks to reverse an order of the Superior court, entered April 5, 1934, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1934, and committing her to jail for 30 days, unless sooner discharged by law, and also imposing upon her a fine of \$200, - she to be confined in jail until said fine and the costs of the proceeding be paid, or until she be discharged according to law.

For the reasons stated in the opinion in case No. 29667, this day filed, the order of the Superior Court is affirmed.

AFFIRMED.

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Page 1

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

U.S. DEPT. OF JUSTICE

IN RE: [Name]
[Address]
[City, State, Zip]

TO THE HONORABLE CLERK OF THE DISTRICT COURT
AT [City, State]
FROM [Name]
[Address]
[City, State, Zip]
[Text of letter follows]

Very truly yours,
[Signature]

32 - 29669

HYMAN BROTHERS, a corporation,
et al.,
Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

ON APPEAL OF LENA MOVITZ,
Appellant.

PER CURIAM.

By this appeal, consolidated for hearing with No. 29667, Lena Movitz seeks to reverse an order of the Superior court, entered April 5, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924, and committing her to jail for 30 days, unless sooner discharged by law, and also imposing upon her a fine of \$200, - she to be confined in jail until said fine and the costs of the proceeding be paid, or until she be discharged according to law.

For the reasons stated in the opinion in case No. 29667, this day filed, the order of the Superior court is affirmed.

AFFIRMED.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 642

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Page - 12

EXHIBIT A, CONTAINING
A COPY OF THE
ORIGINALS AND REPLICATES

EXHIBIT B, CONTAINING
A COPY OF THE
ORIGINALS AND REPLICATES

EXHIBIT C, CONTAINING
A COPY OF THE
ORIGINALS AND REPLICATES

EXHIBIT D, CONTAINING
A COPY OF THE
ORIGINALS AND REPLICATES

S40 I.A. 642

By this report, submitted for the purpose of the
investigation, it is shown that the evidence in the
case of the above-named person, who is alleged to have
been involved in the activities of the above-named
organization, is of such a nature as to indicate that
the person in question is a member of the above-named
organization, and that he is active in its activities.
The evidence in this case is of such a nature as to
indicate that the person in question is a member of the
above-named organization, and that he is active in its
activities.

For the reasons stated in the report in this
case, it is recommended that the person in question
be considered as a member of the above-named
organization.

Respectfully,
[Signature]

34 - 29671

4916a

HYMAN BROTHERS, a corporation,
et al.,

Complainants and Appellees.

v.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, et al.,

Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

ON APPEAL OF JOSEPH KRAVITZ,
Appellant.

240 I.A. 642

PER CURIAM.

By this appeal, consolidated for hearing with No. 29661, Joseph Kravitz seeks to reverse an order of the Superior court of Cook county, entered April 5, 1924, adjudging him guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued March 4, 1924; imposing upon him a fine of \$175, together with the costs of the proceeding; and ordering that he be confined in jail until payment of the fine and costs, or until discharged according to law.

For the reasons stated in the opinion in case No. 29661, this day filed, the order of the Superior court is affirmed.

AFFIRMED.

1918 - 1919

THE NATIONAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

REPORT OF THE AGENT IN CHARGE

ALBANY, N. Y.

RECEIVED

INTERNATIONAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

IN REPLY TO BUREAU LETTER
DATED 10/10/18

340 I. A. 642

ALBANY, N. Y.

On 10/10/18, the following information was received from the Albany office of the International Bureau of Investigation, New York City, dated 10/10/18, regarding the activities of the International Brotherhood of Magicians, I. B. M., in Albany, N. Y., and vicinity, during the year 1918.

The I. B. M. is a fraternal organization, which claims to be a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis.

The I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis.

The I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis.

The I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis. It is claimed that the I. B. M. is a religious order, and is organized on a national basis.

37 - 29674

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF MARIE KUNZ,
Appellant.

PER CURIAM.

4917a
APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 642

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

Handwritten signature or initials at the top of the page.

10 - 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
ON OCTOBER 10, 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
ON OCTOBER 10, 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
ON OCTOBER 10, 1934

2401 A. 642

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
ON OCTOBER 10, 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
ON OCTOBER 10, 1934

This case was investigated for several days in 1934 at New York in case No. 2401, having the same name as above. Together with twenty-five other cases, all being opened in order for contact in relation to a conspiracy involving known in the above article name. That he was said in one article in the case of New York, No. 2401, and the other, in connection in other records to New York, and the Bureau Bureau stated the judgment in this case will be returned.

10/10/34

40 - 29677

FRANCINE WROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of CAMILLE KERRATE,
Appellants.

4918a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 643

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

100-443887-100

STANDARD FORM NO. 64

[illegible]

19676
41 - 29678

FRASCINE PROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of IDA SELKOFF,
Appellant.

4919a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 643

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

41 - 10572

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
JANUARY 10, 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
JANUARY 10, 1934

ON THE BASIS OF THE REPORT
SUBMITTED

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
JANUARY 10, 1934

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION
JANUARY 10, 1934

THE CASE

This case was investigated by Special Agent in Charge
at Chicago, Ill., on Jan. 10, 1934, pursuant to the order of the
Director of the Bureau of Investigation dated Jan. 10, 1934.
The subject of this investigation is a person known as
John Doe, who is alleged to be a member of the
Chicago Police Department. It is alleged that he has been
employed by the Chicago Police Department for a number of years.
It is further alleged that he has been involved in various
activities which are considered to be of a criminal nature.
The purpose of this investigation is to determine whether or not
the subject is a member of the Chicago Police Department and
whether or not he has been involved in the activities alleged.

Very truly yours,
Special Agent in Charge

42 - 29679

FRANCINE BROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF ALFONSO GRAHAM,
Appellant.

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 643

EX - 1007

RECEIVED FROM BUREAU
OF INVESTIGATION, U.S. DEPT.
OF JUSTICE, WASHINGTON, D.C.

7.

REPORT MADE BY SPECIAL AGENT
AND BY SA
INVESTIGATION.

ON BEHALF OF ALBANY BUREAU
INVESTIGATION.

100-1007

This case was investigated for bearing with the above
at New York in case No. 100-1007, during the same time as above.
Investigation with twenty-two other cases, was being conducted by SA
and by SA in Albany in violation of Departmental instructions
in the above entitled case. When he was told in New York
in the case of New York, No. 100-1007, was the same, he
regulation in every respect as this, and the same manner
during the progress in this case will be advised.

WITNESSES:

2401 A 643

RECEIVED FROM
BUREAU OF INVESTIGATION
U.S. DEPT. OF JUSTICE

43 - 29680

FRANCINE BROOK COMPANY,
a Corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS OF
THE INTERNATIONAL LADIES' GARMENT
WORKERS' UNION et al.,
Defendants.

6

ON APPEAL OF ELEANOR SADLOWSKA,
Appellant.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 643

PER CURIAM.

By this appeal, consolidated for hearing with No. 29676, Eleanor Sadlowska seeks to reverse an order of the Superior Court, entered May 29, 1924, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued on March 17, 1924, and committing her to jail for sixty (60) days, unless sooner discharged by law, and also imposing upon her a fine of \$250, - she to be confined in jail, not exceeding four months, until the fine be paid, or until she be discharged according to law.

For the reasons stated in the opinion in case No. 29676, this day filed, the order of the Superior Court is affirmed.

AFFIRMED.

REARVIEW MIRROR, CHRYSLER
CORPORATION, 1957
CHRYSLER CREDIT CORPORATION

7.

NOTE: DO NOT REPAIR OR
ALTER THIS MIRROR
OR THE MIRROR ASSEMBLY
OR THE MIRROR MOUNTING
OR THE MIRROR CABLE.

DO NOT REPAIR OR
ALTER THIS MIRROR
OR THE MIRROR ASSEMBLY
OR THE MIRROR MOUNTING
OR THE MIRROR CABLE.

DO NOT REPAIR

848 A.1012

By this report, the undersigned for having with
Mr. [Name], [Address] [City] [State] [Zip] in order of the
[Name], [Address] [City] [State] [Zip], [Name] [Address] [City] [State] [Zip]
of [Name] [Address] [City] [State] [Zip] in [Name] [Address] [City] [State] [Zip]
[Name], [Address] [City] [State] [Zip], [Name] [Address] [City] [State] [Zip], and
[Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip]
[Name] [Address] [City] [State] [Zip], and also [Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip]
[Name] [Address] [City] [State] [Zip] - [Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip]
[Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip] [Name] [Address] [City] [State] [Zip]

10000

For the reasons stated in the opinion of the
[Name], [Address] [City] [State] [Zip], the order of the [Name] [Address] [City] [State] [Zip]
is affirmed.

WITNESSED

44 - 29681

FRANCINE BROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

ON APPEAL OF GARRIE SIVVERS,
Appellant.

240 I.A. 644

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

2000 2001

1. In the event of a change of ownership of the property, the owner shall be responsible for the payment of the taxes and charges.

4-20-68 10:00 AM TO 11:00 AM
4-20-68 11:00 AM TO 12:00 PM
4-20-68 12:00 PM TO 1:00 PM
4-20-68 1:00 PM TO 2:00 PM
4-20-68 2:00 PM TO 3:00 PM
4-20-68 3:00 PM TO 4:00 PM
4-20-68 4:00 PM TO 5:00 PM
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4-20-68 6:00 PM TO 7:00 PM
4-20-68 7:00 PM TO 8:00 PM
4-20-68 8:00 PM TO 9:00 PM
4-20-68 9:00 PM TO 10:00 PM
4-20-68 10:00 PM TO 11:00 PM
4-20-68 11:00 PM TO 12:00 AM

WINDY IS BEING TO LAUGH, OH
... ..

3100

1. The Commission has received information from the Department of the Interior, Bureau of Land Management, that the following lands are owned by the United States:

1997

45 - 29682

4923a

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

ON APPEAL OF FANNIE GOLDBERG,
Appellant.

240 I.A. 644

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

29683

4924a

46 - 28683

FRANCINE PROCK COMPANY,
a Corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

IN SENATE

SUPERIOR COURT,
COOK COUNTY.

ON APPEAL OF OSCAR SIMON,
Appellant.

240 I.A. 644

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cases. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

47 - 29684

4925a

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

ON APPEAL OF SARAH SNYDER,
Appellant.

240 I.A. 644

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

W. J. P. 20

1000 - 1000

RECEIVED FROM COMPANY
A. J. P. 20
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240 I. A. 644

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This copy was distributed for printing with the original
of the same in case the copy, being the same as the original,
should be found to be correct. All other copies, being
copies for printing in printing a preliminary printing
for the above printed copy. That we have used in the printing
the case of the same, in 1901, the copy being, in printing
in every respect to this, and for the same reason, the
rejection in this case will be different.

ATTACHED.

48 - 29685

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of MARION BROSTEK,
Appellant.

4926a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 645

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

AS - 1088

RECEIVED BY THE DIRECTOR OF THE
BUREAU OF INVESTIGATION
JANUARY 10, 1935

TO THE DIRECTOR OF THE
BUREAU OF INVESTIGATION
FROM THE DIRECTOR OF THE
FEDERAL BUREAU OF PRISONS

RE: THE CASE OF EARL BROWDER
CHARGE: SEDITION

2401A.645

THE CASE

This case was investigated for several days in the
past of Margaret White, born in 1907, together with several other
cases, all being subjects from an action pending in the Court at
Detroit under the charge of violating a prohibition injunction
issued against them. That we have said in our opinion this case filed
in the case of Margaret White, born in 1907, is identical in
every respect to this, and the reasons therein stated are
sufficient in this case also. It is
ADVISED.

24686
49 - 29686

FRANCIS BRICK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF F. BRAVERMAN,
Appellant.

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

4927a
APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 645

7125-7130

548 A. E. 04 S

Abstract

50 - 29687

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

14938a

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 645

ON APPEAL OF STANLEY SKLORS,
Appellant.

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. That we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

Handwritten signature or initials in blue ink.

RECEIVED BY THE DIRECTOR
OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

RECEIVED BY THE DIRECTOR
OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

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OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

2401.A.645

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OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

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OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

This case was investigated for several days and
appears to have been in some way connected with the
above, perhaps with some other case. It being
apparent from the fact that contact is being made
in connection with the above, it is suggested that we have
also in our files in the case of some other case, No. 100-10000,
and also in our files, in connection with every report to this, and
for the reasons stated above the Bureau is this case
will be closed.

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OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

51 - 29688

4927a
FRANCINE PROCK COMPANY,
a corporation et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COCK COUNTY.

ON APPEAL OF EMMA BROGSTROM,
Appellant.

240 I.A. 645

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order ^{for} contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

[illegible]

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1. The first step is to identify the problem or goal. This involves understanding the current situation and what you want to achieve.

THE UNIVERSITY OF CHICAGO

[illegible]

2013

52 - 29689

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF VICTORIA CHRSLAKIEWICZ,
Appellant.

PER CURIAM.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 646

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. That we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

Figure 10.10

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637

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THE UNIVERSITY OF CHICAGO

1918-1919

THE SECRETARY OF THE ARMY

• 2017 年 12 月 1 日

53 - 29690

4931a
FRANCINE BROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

ON APPEAL OF BENJAMIN STEIN,
Appellant.

240 I.A. 646

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 26973, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

[Handwritten signature]

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WASHINGTON, D. C.

STOL A. 646

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OF THE BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

RECEIVED

This case was investigated for several days in the month of June 1935 in New York City, during the same time as above mentioned of the investigation of the case of the above mentioned person in connection with the investigation of the case of the above mentioned person. It is noted that the investigation of the case of the above mentioned person in the month of June 1935, was not completed in the month of June 1935, and it was not until the month of July 1935, that the investigation of the case of the above mentioned person was completed. It is noted that the investigation of the case of the above mentioned person in the month of June 1935, was not completed in the month of June 1935, and it was not until the month of July 1935, that the investigation of the case of the above mentioned person was completed. It is noted that the investigation of the case of the above mentioned person in the month of June 1935, was not completed in the month of June 1935, and it was not until the month of July 1935, that the investigation of the case of the above mentioned person was completed.

RECEIVED

54 - 29691

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS OF
THE INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, et al.,
Defendants.

ON APPEAL OF ALBINA GAG.
Appellant.

PER CURIAM.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 646

By this appeal, consolidated for hearing with No. 29676, Albina Gag seeks to reverse an order of the Superior Court, entered May 29, 1934, adjudging her guilty of contempt of court for violating an injunction against picketing, assaulting, etc., issued on March 17, 1934, and committing her to jail for sixty (60) days, unless sooner discharged by law, and also imposing upon her a fine of \$250, - she to be confined in jail, not exceeding four months, until the fine be paid, or until she be discharged according to law.

For the reasons stated in the opinion in case No. 29676, this day filed, the order of the Superior Court is affirmed.

AFFIRMED.

1901 - 1902

RECEIVED FROM THE
OFFICE OF THE
SHERIFF, ALABAMA

1

THE STATE OF ALABAMA
COUNTY OF
SHERIFF

IN WITNESS WHEREOF
I HAVE HEREUNTO SET MY HAND AND SEAL

SHERIFF

1901 A.D.

In this report, submitted for review and
No. 1901, which was received on the 1st of
Superior Court, entered on the 1st of
of contempt of court for violation of the
pleading, resulting in a judgment of \$100.00
monetary and to jail for 30 days, which was
discharged by law, and also issued upon a fine of \$100.00,
and to be confined to jail, and receiving from the
the fine to jail, as well as the judgment rendered to law.
For the reasons stated in the opinion in case
No. 1901, and by law, the name of the Superior Court
is returned.

SHERIFF

55 - 29692

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of VALENTINE PIESZECHI,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 646

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

56 - 29693

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of SARAH HOWVITZ,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 647

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

ADVISED.

EXHIBIT TWO - CHARTER OF 1911
Dedicated to the
Government

BY

JOHN BROWN OF CHICAGO, ILLINOIS
1911, 1912, 1913
1914, 1915, 1916

ON THE PART OF JOHN BROWN
1911, 1912, 1913, 1914, 1915, 1916

CHARTER OF 1911
IN THE CITY OF CHICAGO

2401.4.015

THE CHARTER

This was the first time that the
city of Chicago had ever been
governed. All laws were made by the
people and the city was a democracy.
The first time that the city was
governed by the people was in 1911.
This was the first time that the
city was governed by the people.
It was the first time that the
city was governed by the people.
The first time that the city was
governed by the people was in 1911.

CHICAGO

57 - 20694

49350
FRANCINE PROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of CHARLES F. MUELLER,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 647

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RECEIVED BY THE DIRECTOR OF THE
BUREAU OF INVESTIGATION
JANUARY 10, 1935

RE

RECEIVED BY THE DIRECTOR OF THE
BUREAU OF INVESTIGATION
JANUARY 10, 1935

ON THE BASIS OF THE INFORMATION
CONTAINED HEREIN

FOR INFO

This case was investigated by Special Agent
James M. [redacted] on January 10, 1935, at
Chicago, Illinois. The results of the investigation
are set forth in the report of the Special Agent
in Charge, Chicago, dated January 10, 1935.
The report of the Special Agent in Charge, Chicago,
dated January 10, 1935, is being furnished to the
Director for his information.

Very truly yours,
[redacted]

RECEIVED BY THE DIRECTOR OF THE
BUREAU OF INVESTIGATION

JANUARY 10, 1935

44-38861

4936a
58 - 29695

FRANCINE BROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF JOHN SWEIKOWSKI,
Appellant.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 647

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RECEIVED
JAN 10 1964
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

13

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... ..

7. TRAVELING FROM TO LARGE TO
8. TRAVELING

742 A.I. 042

in very much the same way, and the same results were obtained in this case as well.

1. *Chrysomelidae*

59 - 29696

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF ROSE GOODMAN,
Appellant.

4437a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 647

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

EXAMINER JOHN J. DOWNEY,
a Notary Public,
Commission Expires...

V.

JOHN DOWNEY BY EDWARD J. DOWNEY,
Attorney at Law,
Notary Public.

AT TEST OF JOHN DOWNEY,
Notary Public.

THE STATE

This case was investigated for hearing with the appeal
of John DOWNEY in case No. 12300, having the same title as above,
together with twenty-one other cases, all being appeals from an
order for removal in violation of a preliminary injunction issued
in the above entitled cause. The same have been in our opinion
in the case of John DOWNEY, No. 12300, and the other cases, is
appealable in every respect as this, and the foregoing reasons
warrant the judgment in this case will be affirmed.

WITNESSED.

2401.A.1047

ATTEST: JOHN J. DOWNEY,

Notary Public.

JOHN DOWNEY

60 - 29697

FRANCINE PROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of EMMA DEERING,
Appellant.

4938a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 648

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

856 41049

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...the

This case was re-evaluated by reviewing the de-

[illegible]

61 - 29698

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF WILLIAM WENTWORTH,
Appellant.

PER CURIAM.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 648

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

Page 2

[Faint handwritten notes and signatures at the top of the page]

WITNESSES

JOHN J. ...

...

840 A.I.O.S

THOMAS ...

...

...

...

...

...

This case was submitted to the ...
at ... in ...
together with ...
under the ...
in the ...
in the ...
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stated the ...

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62 - 29699

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

ON APPEAL OF CLARA MILLER,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 648

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

63 - 29700

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 648

ON APPEAL OF SOPHIE YOUNG,
Appellant.

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

TO THE HONORABLE CHIEF OF THE
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

7.

THE BOARD OF CHIEFS OF JUSTICE
WASHINGTON, D. C.

THE BOARD OF CHIEFS OF JUSTICE
WASHINGTON, D. C.

THE BOARD OF CHIEFS OF JUSTICE

2401 A. 648

This case was consolidated for hearing with the
appeal of Mrs. Harris in case No. 1940, under the same title
as above, together with twenty-one other cases, all being
appeals from an order for removal in violation of a preliminary
injunction issued in the above entitled cases. That we have
said in our opinion in the case of Mrs. Harris, No. 1940,
this day filed, is applicable in every respect to this, and
for the reasons therein stated the judgment in this case will
be affirmed.

ATTORNEYS

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal of ALBERT DUBIEL,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 649

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RECEIVED BY THE
COMMISSIONER OF THE
GENERAL LAND OFFICE

THAT THE
LANDS OF THE
CROWN

THE LANDS OF THE
CROWN
OF THE
CROWN

240 L.A. 349

ON APPEAL OF LANDS
OFFICE

THE LANDS

THIS CASE HAS BEEN REFERRED FOR DECISION TO THE
APPEAL OF LANDS OFFICE IN THE LANDS OFFICE, BEING THE
LANDS OFFICE, TOGETHER WITH THE LANDS OFFICE, ALL
THE LANDS OFFICE FROM AN ORDER FOR THE LANDS OFFICE
OFFICIALLY INFORMATION IN THE LANDS OFFICE OFFICE.
WHAT WE HAVE SAID IN OUR OPINION IN THE LANDS OFFICE,
RE. 240 L.A. 349, IS APPLICABLE IN EVERY RESPECT TO
THIS, AND FOR THE REASONS THEREIN STATED THE JUDGMENT IN THIS
CASE WILL BE AFFIRMED.

THAT THE

4943a

65 - 29702

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 649

On the Appeal of MRS. L. REMAS,
Appellant.

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

66 - 29703

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal of MAURICE ULITZKY,
Appellant.

4944a
240 I.A. 649

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

Q42 A.1042

This case was considered for hearing with the
 report of some parties in case No. 19875, having the same title
 as above, together with twenty-one other cases, all being
 brought from an order for contempt in violation of a preliminary
 injunction issued in the above entitled cases. That we have
 said in our opinion in the case of some parties, No. 19875,
 this day filed, is applicable in every respect to this case
 and the reasons therein stated are followed in this case with
 no change.

Q42 A.1042

67 - 29704

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal of MATHEW ARBABSCKAS,
Appellant.

49452
APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 649

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RECEIVED FROM THE
OFFICE OF THE
DIRECTOR OF THE
BUREAU OF THE
CENSUS

10

JOINT BOARD OF CHIEFS OF STAFF
WASHINGTON, D. C.
1910

OFFICE OF THE
DIRECTOR OF THE
BUREAU OF THE
CENSUS

THE CHIEF

This case was considered for action with the
approval of the Board in case No. 1010, under the name
of the above, subject of the investigation, all being
conducted from an effort for the purpose of obtaining a
statement in the above captioned case. It was found
that in the opinion of the Board of the Board, No. 1010,
the case was filed, in accordance with the report of the
for the reasons herein stated the following in this case was
be referred.

RECEIVED

2401 A. 640

1910

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1910

4946a

68 - 29705

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of LOUIS SOKOLOFF,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 650

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

3401A. 620

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

RECEIVED
JAN 10 1962
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.
ON THE BASIS OF THE INFORMATION
CONTAINED HEREIN

THIS CASE WAS ASSIGNED TO THE
BUREAU OF INVESTIGATION, WASH. D. C., FOR
ATTENTION. ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN
OTHERWISE. DATE 10-10-80 BY SP-6
JAN 10 1962
RECEIVED
JAN 10 1962
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

ATTACHED

69 - 29706

FRANCINE WROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of CELIA FACTOR,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 650

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

059 A I 042

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

107
108
109
110

1. That the said ...
2. That the said ...
3. That the said ...
4. That the said ...
5. That the said ...
6. That the said ...
7. That the said ...
8. That the said ...
9. That the said ...
10. That the said ...

Figure 1

[illegible]

70 - 29707

49/80

FRANCINE FROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of MINNIE SUGARMAN,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 650

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

FRANCINE PROCK COMPANY,
a corporation, et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

On appeal of ALBERT D. FERGUSON,
Appellant.

240 I.A. 650

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RECEIVED FROM CREDIT
a copy of the
Complaint and Affidavit

1900

RECEIVED FROM CREDIT

RECEIVED FROM CREDIT
a copy of the
Complaint and Affidavit

1900

2401A. 650

ON APPEAL OF ALBERT B. BROWNE
Appellant.

THE COURT.

This case was submitted for hearing with the appeal
of the writ in case No. 12345, during the term of the
Court with the other cases, all being appeals from the
order of the court in granting a writ of habeas corpus
in the above entitled case. That we have said in our opinion
in the case of the writ, No. 12345, that the writ is
applicable in every respect to this, and for the reasons therein
stated the judgment in this case will be affirmed.

WITNESSES.

72 - 29709

FRANCINE FROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOGGERS,
etc., et al.,
Defendants.

On appeal of CLARA ZAZKOW,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 651

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

RE - 1000

INVESTIGATIVE REPORT NO. 1000
A CORPORATION OF ALA.
ORGANIZATION AND PURPOSE

Y.

UNITED STATES OF AMERICA
DIST. CT. ALA.
BIRMINGHAM.

IN REPLY TO ORDER OF ALA. COURT
OF COMMERCE.

THE COURT.

That we have been requested to testify with the
affirmation of our faith in our country, during the past
year we have, together with our family, all
being separate from us, for the purpose of visiting a
religion, in connection with the above entitled matter.
That we have held in our opinion in the case of our family,
No. 1000, this day filed, in compliance with every request
made, and for the reasons therein stated the judgment in
this case will be affirmed.

WITNESS.

2401 A. 651

UNITED STATES
DISTRICT COURT
BIRMINGHAM

EXHIBIT NO. 1000

FRANCINE BROCK COMPANY,
a corporation, et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal of EVELYN DOERNFELD,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 651

PER CURIAM.

This case was consolidated for hearing with the appeal of Rose Harris in case No. 29673, having the same title as above, together with twenty-one other cases, all being appeals from an order for contempt in violating a preliminary injunction issued in the above entitled cause. What we have said in our opinion in the case of Rose Harris, No. 29673, this day filed, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

2401A. 651

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THE RULES.

This case was consolidated for hearing with the
appeal of John Smith in case No. 12345, having the same issue
in law, together with twenty-one other cases, all being
appeals from an order for summary judgment in violation of California
law. The parties to the cases were John Smith, et al. vs. John
Doe, et al. The cases were argued in the case of John Smith, et al. vs.
John Doe, et al. The cases were argued in every respect as if
the case were heard in the case of John Smith, et al. vs. John Doe, et al.

RECEIVED

74 - 29711

FRANCINE PROCK COMPANY et al.,
Complainants and
Appellees,

vs.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On the Appeal of YATTIE RASMAN,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 651

PER CURIAM.

This case was consolidated for hearing with the appeal of Margaret Welch, Gen. No. 29675, together with eleven other cases, all being appeals from an order entered in the above entitled cause for contempt in violating a preliminary injunction issued therein. What we have said in our opinion this day filed in the case of Margaret Welch, Gen. No. 29675, is applicable in every respect to this, and for the reasons therein stated the judgment in this case will be affirmed.

AFFIRMED.

5.

1278 - 45

120 ALOS

1. 本表由 2010 年 10 月 1 日起实施。
2. 本表由 2010 年 10 月 1 日起实施。
3. 本表由 2010 年 10 月 1 日起实施。

100

DATE: 11/11/1964

THE UNIVERSITY OF CHICAGO

[illegible]

79 - 29716

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 651

On appeal in the matter of
JENNIE CHADIN,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior Court is affirmed.

AFFIRMED.

[Handwritten signature]

1917 - 1918

RECEIVED - BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED - BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED - BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

340 L. A. 651

RECEIVED - BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED

This is an appeal from an order of the Superior Court
imposing a punishment on appellant for violating an injunction
of that court. The case was tried with jury at Los Angeles,
California, and the verdict was in favor of the defendant.
The facts of the case are as follows: The defendant
was charged with violating an injunction of the Superior Court
of Los Angeles, California, which was issued in the case of
People vs. [Name], and for the reasons stated in the opinion filed in
that case (Cal. No. 20712). The order of the Superior Court
is affirmed.

ATTEST

80 - 29717

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 652

On appeal in the matter of
ESTHER RICHMAN,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713) the order of the Superior court is affirmed.

AFFIRMED.

... ..

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-14-2001 BY 60322 UCBAW

To submit an application to
the Board of Directors,
please send it to:

82

This is an appeal from an order of the Superior Court
granting a writ of habeas corpus in a proceeding to
release a prisoner on appeal from conviction on indictment
of that court. The case was tried at the trial
with which it was consolidated and heard in this court upon the
same facts, evidence and issues. The facts are set out in
the brief, and for the reasons stated in the opinion filed
in that case (2001, 2002) the order of the Superior Court
is affirmed.

[illegible]

570. 44

81 - 29718

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
MEYER KRANZ,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 652

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior Court is affirmed.

AFFIRMED.

1. In the "MAGNETIC FIELD" section, the text "MAGNETIC FIELD" is repeated twice.

335 .A104S

17

... ..

[illegible]

主 人 公

THE UNIVERSITY OF CHICAGO

VOLCAN CANYON

• **1994**

2000

From "History of the City of New York" by John Smith, 1630

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

of that kind. The more you talk to me, the more I'll like you.

† $\lim_{t \rightarrow \infty} \int_{\mathbb{R}^n} \rho(x) dx = 0$ if and only if $\lim_{t \rightarrow \infty} \int_{\mathbb{R}^n} \rho(x) dx = 0$ and $\lim_{t \rightarrow \infty} \int_{\mathbb{R}^n} \rho(x) dx = 0$.

THE UNIVERSITY OF CHICAGO

(b) (5) DPP, (c) (7)(C), (d) (5) ACP, (e) (5) ACP, (f) (5) ACP, (g) (5) ACP, (h) (5) ACP, (i) (5) ACP, (j) (5) ACP, (k) (5) ACP, (l) (5) ACP, (m) (5) ACP, (n) (5) ACP, (o) (5) ACP, (p) (5) ACP, (q) (5) ACP, (r) (5) ACP, (s) (5) ACP, (t) (5) ACP, (u) (5) ACP, (v) (5) ACP, (w) (5) ACP, (x) (5) ACP, (y) (5) ACP, (z) (5) ACP.

Page 100 of 100

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1998

82 - 29719

GRACELINE BRASS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

49560
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 652

On appeal in the matter of
CAROLINE WEGLOSKE,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

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12. *Not a member of the family*

CHINA'S POLICY

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

That same (San. No. 1011), the order of the negative words
 both cases, and the names placed in the original form in
 some cases, others, and details. The latter are the same in
 each which is not mentioned and form in this year upon the
 of that case. The case was taken with that of 1841, 1842,
 including a statement on question in relation to relation
 with it as appears from an order of the negative words

• **Don't** use a **single** **word** as a **topic** **or** **subtopic**.

100

83 - 29720

GRACE LINE DRESS COMPANY et al.,
Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
THERESA RHODE,
Appellant.

4957a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 652

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713, the order of the Superior court is affirmed.

AFFIRMED.

84 - 29721

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
Rose Vinesilver,
Appellant.

4958a
APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 653

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

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4. MATERIALS REQUIRED TO MAKE THEM

* 4/20/05 ♀♀

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Abstract

● 2010 年 10 月 1 日起, 凡在中华人民共和国境内销售货物或者提供加工、修理修配劳务以及进口货物的单位和个人, 均应按照《中华人民共和国增值税暂行条例》及实施细则缴纳增值税。

[illegible]

CONCLUSIONS

4959a

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 653

On appeal in the matter of
JULIA BROZA,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

DATE OF COMPLETION OF WORK: 10/10/1998

TO: SAC, NEW YORK (100-388610)
FROM: SAC, NEW YORK (100-388610) (P)
SUBJECT: [REDACTED]

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[illegible]

• (2007) 274

4960a

86 - 29723

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 653

On appeal in the matter of
BESSIE GETMAN, alias Bessie Gilman,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

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Page 1

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION

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This is an official report of the Bureau of Investigation. It contains information regarding the activities of the Bureau of Investigation. The information is confidential and should be handled accordingly. The Bureau of Investigation is a part of the Department of Justice. It is responsible for the investigation and prosecution of crimes. The Bureau of Investigation is a part of the Department of Justice. It is responsible for the investigation and prosecution of crimes. The Bureau of Investigation is a part of the Department of Justice. It is responsible for the investigation and prosecution of crimes.

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION

RECEIVED BY THE DIRECTOR OF THE BUREAU OF INVESTIGATION

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 653

On appeal in the matter of
YETTA HORNSTEIN,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

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RECEIVED BY THE DIRECTOR OF THE
BUREAU OF THE ARMY
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333 A. 1049

10-11-68

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This is an appeal from an order of the Virginia Court of Appeals reversing a judgment of the Circuit Court of the City of Richmond, entered on the 14th day of May, 1910, in a case captioned as above.

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
WANDA KOLETTA,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 654

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

1973 - 10

RECEIVED BY THE SECRETARY OF THE
COMMISSIONER OF THE GENERAL LAND OFFICE

V.

THE SECRETARY OF THE GENERAL LAND OFFICE
TO THE COMMISSIONER OF THE GENERAL LAND OFFICE

Reference is made to the letter of the 10th inst.

The above is the subject of the letter of the 10th inst.

2401 A. 048

This is an appeal from an order of the Registrar
made imposing a condition on the grant of a lease
in favour of the applicant. The order was made on the 10th of
June 1973, and it was stated that the applicant was to
be bound by the same terms, conditions and covenants as
the lease in the name of the applicant, and for the reasons
stated in the opinion filed in that case (see para. 10 of the
order of the Registrar which is attached).

89 - 29726

GRACKLINE DRESS COMPANY et al.,
Complainants and Appellees.

v:

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

On appeal in the matter of
ROSE PRITZ,
Appellant.

240 I.A. 654

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

[Handwritten signature]

NOTES - 2

...IN THE COURT OF THE COMMONS OF GREAT BRITAIN

AT

THE HOUSE OF COMMONS, IN THE CITY OF LONDON,
...IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWENTY

THAT THE

...AND

...AND

2401.A.654

...IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWENTY

...

...

There is no record of any order of the House of Commons
...in the year of our Lord one thousand nine hundred and twenty
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the
...and the House of Commons has not yet decided upon the

...

90 e- 29727

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
JENNIE MILLER,
Appellant.

PER CURIAM.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 654

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

NO. 4-1077

RECEIVED BY THE DIRECTOR OF THE
BUREAU OF INVESTIGATION

7

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2401A 624

91 - 29728

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
JOHN GOTTLINE,
Appellant.

PER CURIAM.

49650
240 I.A. 654

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

422 A1048

1. 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

THE UNIVERSITY OF CHICAGO

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[Faint, illegible handwritten notes]

There is no appeal from an order of the Registrar made in exercising a jurisdiction conferred on him by the provisions of the Act. The only way in which an order made by the Registrar can be set aside is by an order of the court. The court has the power to set aside an order made by the Registrar if it is satisfied that the Registrar acted in excess of his jurisdiction or that he acted in bad faith or that he acted on a mistaken view of the law. The court has the power to set aside an order made by the Registrar if it is satisfied that the Registrar acted in excess of his jurisdiction or that he acted in bad faith or that he acted on a mistaken view of the law.

• (1) 2008

92 - 29729

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc. et al.,
Defendants.

On appeal in the matter of
ISADORE DIXLER,
Appellant.

4966
240 I.A. 654

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior Court is affirmed.

AFFIRMED.

GRACIELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc. et al.,
Defendants.

On appeal in the matter of
ISADORE DIXIE,
appellant.

PER CURIAM.

This is an appeal from an order of the Superior Court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, exhibits and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 20712), the order of the Superior Court is affirmed.

AFFIRMED.

2401A. 657

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

93 - 29730

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
DAVID KRAUSS,
Appellant.

4967a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 655

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

4757a

4757a - 10

RECEIVED THE CHIEF OF POLICE
COMMISSIONER AND SHERIFF

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COMMISSIONER AND SHERIFF

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240 I.A. 655

RECEIVED THE CHIEF OF POLICE
COMMISSIONER AND SHERIFF

RECEIVED THE CHIEF OF POLICE

This is an appeal from an order of the Superior Court...
...in the opinion filed in that case (D.C. No. 10,000), and
...order of the Superior Court is affirmed.
...AFFIRMED.

94 - 29731

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
BERTHA PLANTE NOEL,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COCK COUNTY.

240 I.A. 655

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

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DATE 12-14-2004 BY 60322 UCBAW

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There is no report from the subject of any further information regarding the subject's activities in the past few days.

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1999

4969a

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 655

On appeal in the matter of
MARY SINGEL,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rees Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

442

10-1-1971

RECEIVED BY THE COURT AT 11.1
Clerks Office and Registrar

V.

THE COURT OF CRIMINAL JUSTICE
11.1.1971
Birmingham

ON appeal in the matter of
MAY, JAMES

Appellant

THE COURT

This is an appeal from the order of the Recorder made
imposing a sentence on appeal for violation of probation
of that court. The case was tried at the Court of Appeal
where it was considered and found in this court upon the
facts found, evidence and plea. The facts are the same in
both cases, and the reasons stated in the opinion filed in
that case (Case No. 1111). The order of the Recorder must be

affirmed.

WILLIAMS

3401.A.655

4970a

GRACKLINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS, etc.,
et al.,
Defendants.

APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 655

On appeal in the matter of
SARAH SIDEL,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

417 - 2

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

...in the ...

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1. 2000 2. 2001 3. 2002 4. 2003 5. 2004 6. 2005 7. 2006 8. 2007 9. 2008 10. 2009 11. 2010 12. 2011 13. 2012 14. 2013 15. 2014 16. 2015 17. 2016 18. 2017 19. 2018 20. 2019 21. 2020 22. 2021 23. 2022 24. 2023 25. 2024 26. 2025 27. 2026 28. 2027 29. 2028 30. 2029 31. 2030 32. 2031 33. 2032 34. 2033 35. 2034 36. 2035 37. 2036 38. 2037 39. 2038 40. 2039 41. 2040 42. 2041 43. 2042 44. 2043 45. 2044 46. 2045 47. 2046 48. 2047 49. 2048 50. 2049 51. 2050 52. 2051 53. 2052 54. 2053 55. 2054 56. 2055 57. 2056 58. 2057 59. 2058 60. 2059 61. 2060 62. 2061 63. 2062 64. 2063 65. 2064 66. 2065 67. 2066 68. 2067 69. 2068 70. 2069 71. 2070 72. 2071 73. 2072 74. 2073 75. 2074 76. 2075 77. 2076 78. 2077 79. 2078 80. 2079 81. 2080 82. 2081 83. 2082 84. 2083 85. 2084 86. 2085 87. 2086 88. 2087 89. 2088 90. 2089 91. 2090 92. 2091 93. 2092 94. 2093 95. 2094 96. 2095 97. 2096 98. 2097 99. 2098 100. 2099 101. 2100 102. 2101 103. 2102 104. 2103 105. 2104 106. 2105 107. 2106 108. 2107 109. 2108 110. 2109 111. 2110 112. 2111 113. 2112 114. 2113 115. 2114 116. 2115 117. 2116 118. 2117 119. 2118 120. 2119 121. 2120 122. 2121 123. 2122 124. 2123 125. 2124 126. 2125 127. 2126 128. 2127 129. 2128 130. 2129 131. 2130 132. 2131 133. 2132 134. 2133 135. 2134 136. 2135 137. 2136 138. 2137 139. 2138 140. 2139 141. 2140 142. 2141 143. 2142 144. 2143 145. 2144 146. 2145 147. 2146 148. 2147 149. 2148 150. 2149 151. 2150 152. 2151 153. 2152 154. 2153 155. 2154 156. 2155 157. 2156 158. 2157 159. 2158 160. 2159 161. 2160 162. 2161 163. 2162 164. 2163 165. 2164 166. 2165 167. 2166 168. 2167 169. 2168 170. 2169 171. 2170 172. 2171 173. 2172 174. 2173 175. 2174 176. 2175 177. 2176 178. 2177 179. 2178 180. 2179 181. 2180 182. 2181 183. 2182 184. 2183 185. 2184 186. 2185 187. 2186 188. 2187 189. 2188 190. 2189 191. 2190 192. 2191 193. 2192 194. 2193 195. 2194 196. 2195 197. 2196 198. 2197 199. 2198 200. 2199 201. 2200 202. 2201 203. 2202 204. 2203 205. 2204 206. 2205 207. 2206 208. 2207 209. 2208 210. 2209 211. 2210 212. 2211 213. 2212 214. 2213 215. 2214 216. 2215 217. 2216 218. 2217 219. 2218 220. 2219 221. 2220 222. 2221 223. 2222 224. 2223 225. 2224 226. 2225 227. 2226 228. 2227 229. 2228 230. 2229 231. 2230 232. 2231 233. 2232 234. 2233 235. 2234 236. 2235 237. 2236 238. 2237 239. 2238 240. 2239 241. 2240 242. 2241 243. 2242 244. 2243 245. 2244 246. 2245 247. 2246 248. 2247 249. 2248 250. 2249 251. 2250 252. 2251 253. 2252 254. 2253 255. 2254 256. 2255 257. 2256 258. 2257 259. 2258 260. 2259 261. 2260 262. 2261 263. 2262 264. 2263 265. 2264 266. 2265 267. 2266 268. 2267 269. 2268 270. 2269 271. 2270 272. 2271 273. 2272 274. 2273 275. 2274 276. 2275 277. 2276 278. 2277 279. 2278 280. 2279 281. 2280 282. 2281 283. 2282 284. 2283 285. 2284 286. 2285 287. 2286 288. 2287 289. 2288 290. 2289 291. 2290 292. 2291 293. 2292 294. 2293 295. 2294 296. 2295 297. 2296 298. 2297 299. 2298 300. 2299 301. 2300 302. 2301 303. 2302 304. 2303 305. 2304 306. 2305 307. 2306 308. 2307 309. 2308 310. 2309 311. 2310 312. 2311 313. 2312 314. 2313 315. 2314 316. 2315 317. 2316 318. 2317 319. 2318 320. 2319 321. 2320 322. 2321 323. 2322 324. 2323 325. 2324 326. 2325 327. 2326 328. 2327 329. 2328 330. 2329 331. 2330 332. 2331 333. 2332 334. 2333 335. 2334 336. 2335 337. 2336 338. 2337 339. 2338 340. 2339 341. 2340 342. 2341 343. 2342 344. 2343 345. 2344 346. 2345 347. 2346 348. 2347 349. 2348 350. 2349 351. 2350 352. 2351 353. 2352 354. 2353 355. 2354 356. 2355 357. 2356 358. 2357 359. 2358 360. 2359 361. 2360 362. 2361 363. 2362 364. 2363 365. 2364 366. 2365 367. 2366 368. 2367 369. 2368 370. 2369 371. 2370 372. 2371 373. 2372 374. 2373 375. 2374 376. 2375 377. 2376 378. 2377 379. 2378 380. 2379 381. 2380 382. 2381 383. 2382 384. 2383 385. 2384 386. 2385 387. 2386 388. 2387 389. 2388 390. 2389 391. 2390 392. 2391 393. 2392 394. 2393 395. 2394 396. 2395 397. 2396 398. 2397 399. 2398 400. 2399 401. 2400 402. 2401 403. 2402 404. 2403 405. 2404 406. 2405 407. 2406 408. 2407 409. 2408 410. 2409 411. 2410 412. 2411 413. 2412 414. 2413 415. 2414 416. 2415 417. 2416 418. 2417 419. 2418 420. 2419 42

There is no question that the Government is
convinced of the guilt of the defendant in this case.
The case was tried in the Federal Court
and the jury found the defendant guilty of the crime.
The Government is satisfied with the verdict and
is not seeking a new trial. The Government is
satisfied with the verdict and is not seeking a new trial.
The Government is satisfied with the verdict and is not seeking a new trial.

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550 A. 1048

97 - 29734

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
IDA DURNOW,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 656

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

467

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DATE 10-10-2001 BY 60322 UCBAW/SJS

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2000

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19521370

CHIEF OF POLICE

98 - 29735

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
EVA JACOBS,
Appellant.

PER CURIAM.

4972a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 T. A. 656

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

05792 - DC

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

10

.. 12 28 .. 1949

TO THE HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES
IN SENATE CHAMBERS, WASHINGTON, D. C.

92111

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

There is no special reason to order of the register
no further investigation or examination for obtaining an
information of that order. The case was tried with that
information, which was considered and found in this
case upon the same record, report and file. The facts
and the case is held correct, and the reasons stated in the
opinion filed in that case (No. 1071), the order of the
court is affirmed.

no other persons are involved in this case.

2000 年 12 月 20 日 星期一 晴 12 月 20 日 星期一 晴

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and the β values are

and the value of β (1970) and (1971) were equal to 0.25 and 0.20, respectively.

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44732

99 - 29736

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
ANNA BURENBAUM,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 656

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

2000

23

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• *Chrysomelidae* (beetles)

1977

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The catfish will bite at large worms

● 2004年12月

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There is an appeal from an order of the Registrar
which involves a point of law or equity for which an
allowance of costs is made. The case was tried with the
case above, and which is now consolidated and heard in this
court upon the same record, evidence and issues. The costs
of the case in both cases, and for the reasons stated in the
decision filed in last case (Gen. No. 2715), the order of the
Registrar stands as affirmed.

CONTRA

100 - 29737

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
ROSE SMOERIO,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 656

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior Court is affirmed.

AFFIRMED.

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The following information was obtained from a review of the records of the Federal Bureau of Investigation:

[The remainder of the page contains several lines of extremely faint, mostly illegible typed text.]

● 2014年10月

101 - 29738

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
ROSE STONE,
Appellant.

PER CURIAM.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 657

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

[Handwritten signature]

NOT - 10714

RECEIVED BY THE SECRETARY OF THE
TREASURY DEPARTMENT

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TREASURY DEPARTMENT

240 I.A. 657

RECEIVED BY THE SECRETARY OF THE
TREASURY DEPARTMENT

THE SECRETARY

This is an appeal from an order of the superior court
imposing a penalty on appellant for violation of the
law of the state. The case was tried with jury
with which it was consolidated and heard in this court upon the
same record, exhibits and briefs. The facts are the same in
both cases, and for the reasons stated in the opinion filed in
that case (Gen. No. 10714), the order of the superior court is
affirmed.

RECEIVED

4977a

103 - 29740

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

On appeal in the matter of
FANNIE ROZEN,
Appellant.

240 I.A. 657

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

1972 - 1973

...DE 54 THOMAS STREET BIRMINGHAM
...DE 54 THOMAS STREET BIRMINGHAM

47

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10-10-2001 BY 60322 UCBAW

4. *Staphylococcus aureus*

THE NATIONAL ARCHIVES
COLLEGE PARK, MARYLAND

1512

CONCLUSIONS

"It's not like I'm going to be a doctor or a lawyer."

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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and the other two are the same as in the first case.

100-443887-100

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[illegible]

104 - 29741

4978a

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 657

On appeal in the matter of
ANNA FELDMAN,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

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IN THE COURT OF THE DISTRICT OF COLUMBIA
IN RE: THE ESTATE OF JAMES M. HARRIS
JAMES M. HARRIS, DECEASED
BY WILLIAM H. HARRIS, ADMINISTRATOR
VS.
JAMES M. HARRIS, DECEASED
BY WILLIAM H. HARRIS, ADMINISTRATOR
VS.
JAMES M. HARRIS, DECEASED
BY WILLIAM H. HARRIS, ADMINISTRATOR

755 AT 049

11/11/2011

This is an appeal from an order of the Superior Court
granting a writ of habeas corpus for releasing an individual
on bail. The case was filed in the County of Los Angeles,
California, and heard by the Honorable Judge [Name Redacted]
of the Superior Court. The facts are as follows:
The defendant, [Name Redacted], was arrested on a charge of
[Charge] on or about [Date]. He was held in custody at the
County Jail until he was released on bail for the sum of \$[Amount].
The defendant claims that his arrest was unlawful and that
he is entitled to his freedom. He argues that the evidence
against him is insufficient to justify his detention.
The People argue that the defendant's arrest was lawful
and that he is lawfully detained.

● 1. 3. 5. 7. 9. 11. 13. 15. 17. 19. 21. 23. 25. 27. 29. 31. 33. 35. 37. 39. 41. 43. 45. 47. 49. 51. 53. 55. 57. 59. 61. 63. 65. 67. 69. 71. 73. 75. 77. 79. 81. 83. 85. 87. 89. 91. 93. 95. 97. 99. 101. 103. 105. 107. 109. 111. 113. 115. 117. 119. 121. 123. 125. 127. 129. 131. 133. 135. 137. 139. 141. 143. 145. 147. 149. 151. 153. 155. 157. 159. 161. 163. 165. 167. 169. 171. 173. 175. 177. 179. 181. 183. 185. 187. 189. 191. 193. 195. 197. 199. 201. 203. 205. 207. 209. 211. 213. 215. 217. 219. 221. 223. 225. 227. 229. 231. 233. 235. 237. 239. 241. 243. 245. 247. 249. 251. 253. 255. 257. 259. 261. 263. 265. 267. 269. 271. 273. 275. 277. 279. 281. 283. 285. 287. 289. 291. 293. 295. 297. 299. 301. 303. 305. 307. 309. 311. 313. 315. 317. 319. 321. 323. 325. 327. 329. 331. 333. 335. 337. 339. 341. 343. 345. 347. 349. 351. 353. 355. 357. 359. 361. 363. 365. 367. 369. 371. 373. 375. 377. 379. 381. 383. 385. 387. 389. 391. 393. 395. 397. 399. 401. 403. 405. 407. 409. 411. 413. 415. 417. 419. 421. 423. 425. 427. 429. 431. 433. 435. 437. 439. 441. 443. 445. 447. 449. 451. 453. 455. 457. 459. 461. 463. 465. 467. 469. 471. 473. 475. 477. 479. 481. 483. 485. 487. 489. 491. 493. 495. 497. 499. 501. 503. 505. 507. 509. 511. 513. 515. 517. 519. 521. 523. 525. 527. 529. 531. 533. 535. 537. 539. 541. 543. 545. 547. 549. 551. 553. 555. 557. 559. 561. 563. 565. 567. 569. 571. 573. 575. 577. 579. 581. 583. 585. 587. 589. 591. 593. 595. 597. 599. 601. 603. 605. 607. 609. 611. 613. 615. 617. 619. 621. 623. 625. 627. 629. 631. 633. 635. 637. 639. 641. 643. 645. 647. 649. 651. 653. 655. 657. 659. 661. 663. 665. 667. 669. 671. 673. 675. 677. 679. 681. 683. 685. 687. 689. 691. 693. 695. 697. 699. 701. 703. 705. 707. 709. 711. 713. 715. 717. 719. 721. 723. 725. 727. 729. 731. 733. 735. 737. 739. 741. 743. 745. 747. 749. 751. 753. 755. 757. 759. 761. 763. 765. 767. 769. 771. 773. 775. 777. 779. 781. 783. 785. 787. 789. 791. 793. 795. 797. 799. 801. 803. 805. 807. 809. 811. 813. 815. 817. 819. 821. 823. 825. 827. 829. 831. 833. 835. 837. 839. 841. 843. 845. 847. 849. 851. 853. 855. 857. 859. 861. 863. 865. 867. 869. 871. 873. 875. 877. 879. 881. 883. 885. 887. 889. 891. 893. 895. 897. 899. 901. 903. 905. 907. 909. 911. 913. 915. 917. 919. 921. 923. 925. 927. 929. 931. 933. 935. 937. 939. 941. 943. 945. 947. 949. 951. 953. 955. 957. 959. 961. 963. 965. 967. 969. 971. 973. 975. 977. 979. 981. 983. 985. 987. 989. 991. 993. 995. 997. 999. 1001. 1003. 1005. 1007. 1009. 1011. 1013. 1015. 1017. 1019. 1021. 1023. 1025. 1027. 1029. 1031. 1033. 1035. 1037. 1039. 1041. 1043. 1045. 1047. 1049. 1051. 1053. 1055. 1057. 1059. 1061. 1063. 1065. 1067. 1069. 1071. 1073. 1075. 1077. 1079. 1081. 1083. 1085. 1087. 1089. 1091. 1093. 1095. 1097. 1099. 1101. 1103. 1105. 1107. 1109. 1111. 1113. 1115. 1117. 1119. 1121. 1123. 1125. 1127. 1129. 1131. 1133. 1135. 1137. 1139. 1141. 1143. 1145. 1147. 1149. 1151. 1153. 1155. 1157. 1159. 1161. 1163. 1165. 1167. 1169. 1171. 1173. 1175. 1177. 1179. 1181. 1183. 1185. 1187. 1189. 1191. 1193. 1195. 1197. 1199. 1201. 1203. 1205. 1207. 1209. 1211. 1213. 1215. 1217. 1219. 1221. 1223. 1225. 1227. 1229. 1231. 1233. 1235. 1237. 1239. 1241. 1243. 1245. 1247. 1249. 1251. 1253. 1255. 1257. 1259. 1261. 1263. 1265. 1267. 1269. 1271. 1273. 1275. 1277. 1279. 1281. 1283. 1285. 1287. 1289. 1291. 1293. 1295. 1297. 1299. 1301. 1303. 1305. 1307. 1309. 1311. 1313. 1315. 1317. 1319. 1321. 1323. 1325. 1327. 1329. 1331. 1333. 1335. 1337. 1339. 1341. 1343. 1345. 1347. 1349. 1351. 1353. 1355. 1357. 1359. 1361. 1363. 1365. 1367. 1369. 1371. 1373. 1375. 1377. 1379. 1381. 1383. 1385. 1387. 1389. 1391. 1393. 1395. 1397. 1399. 1401. 1403. 1405. 1407. 1409. 1411. 1413. 1415. 1417. 1419. 1421. 1423. 1425. 1427. 1429. 1431. 1433. 1435. 1437. 1439. 1441. 1443. 1445. 1447. 1449. 1451. 1453. 1455. 1457. 1459. 1461. 1463. 1465. 1467. 1469. 1471. 1473. 1475. 1477. 1479. 1481. 1483. 1485. 1487. 1489. 1491. 1493. 1495. 1497. 1499. 1501. 1503. 1505. 1507. 1509. 1511. 1513. 1515. 1517. 1519. 1521. 1523. 1525. 1527. 1529. 1531. 1533. 1535. 1537. 1539. 1541. 1543. 1545. 1547. 154

105 - 29742

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
BESSIE FISHMAN,
Appellant.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 657

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

Handwritten signature or initials at the top of the page.

1914 - 1915

RECEIVED BY THE SECRETARY OF THE
NAVY DEPARTMENT

W.

JOHN W. HARRIS, JR.
1914 - 1915

Witnessed

RECEIVED BY THE SECRETARY OF THE
NAVY DEPARTMENT

JOHN W. HARRIS, JR.
1914 - 1915

W.

It is agreed in the matter of
JOHN W. HARRIS, JR.

Witnessed

3101A 028

RECEIVED BY THE SECRETARY OF THE
NAVY DEPARTMENT

This is an extract from the report of the Inspector General
concerning a complaint of an agent of the Department of the Interior
of that country. The case was filed with the Department of the Interior
also which is not recommended for action in this matter when the
same record, evidence and facts. The facts and the case is
not clear. The Department of the Interior is the opinion filed in
this case (See, Vol. 111). The facts of the Department are as
follows.

RECEIVED BY THE SECRETARY OF THE
NAVY DEPARTMENT

106 - 29743

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

On appeal in the matter of
LILLIAN GREENBERG,
Appellant.

49800
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 658

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Rose Silver, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29713), the order of the Superior court is affirmed.

AFFIRMED.

107 - 29744

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT.

COOK COUNTY.

On appeal in the matter of
EUGENIA SZLACHTA,
Appellant.

240 I.A. 658

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior Court is affirmed.

AFFIRMED.

4/3/2

107 - 2074

EMERSON TRADING COMPANY OF ALA.
Company and Associates

v.

JOHN LEWIS OF CHICKEN LEGS
et al.

LOCAL COURT
DISTRICT COURT
CIVIL DIVISION

240 I.A. 658

In appeal in the matter of
EMERSON TRADING COMPANY
Appellants.

THE COURT.

This is an appeal from an order of the Superior Court relating to a judgment on appeal for violation of injunction of that court. The case was tried with all jury questions, which which it was consolidated and heard in this court upon the same record, exhibits and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 2074), the order of the Superior Court is affirmed.

APPROVED.

108 - 29745

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees,

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

4982a
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 658

On appeal in the matter of
MINNIE SEIDEL,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewitz, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Gen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

1852 - 1853

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them. The list includes names such as "John A. Smith", "Mary E. Jones", and "Robert L. Brown".

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

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853 A. I. ONS

to be used in the future.

1997

There is no report from the Bureau of the
Department of Agriculture for the purpose of
the Bureau. The Bureau was not at the time
of the report. It was not at the time of the
report. It was not at the time of the report.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

109 - 29746

GRACELINE DRESS COMPANY et al.,
Complainants and Appellees.

v.

JOINT BOARD OF CHICAGO LOCALS,
etc., et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

240 I.A. 658

On appeal in the matter of
MORRIS KRAVIS,
Appellant.

PER CURIAM.

This is an appeal from an order of the Superior court imposing a punishment on appellant for violating an injunction of that court. The case was tried with that of Mary Gurewits, with which it was consolidated and heard in this court upon the same record, abstracts and briefs. The facts are the same in both cases, and for the reasons stated in the opinion filed in that case (Sen. No. 29712), the order of the Superior court is affirmed.

AFFIRMED.

100 - 62742

CHANGING THE NAME OF A
PERSONALITY AND ADDRESS

1.

THE FIRST PART OF THE NAME
OF ALL PERSONS

A PERSON
WHICH IS
THE NAME

2401.A.658

ON WHICH IS THE NAME OF
THE PERSON

THE NAME

This is an account from the office of the
county treasurer and is intended for the
information of the county. The name of the
person is given, with which it was associated
this name from the time of the first
and the name in each case, and for the reason
outlined above in that case. The name of the
person is given.

THE NAME

230 - 30083

EDITH IRAACSON,

Appellee,

v.

CITY OF CHICAGO,

Appellant.)

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 659

Opinion Filed January 20, 1926.

MR. JUSTICE THOMSON delivered the opinion
of the court.

By this appeal the defendant, City of Chicago, seeks to reverse a judgment for \$1200 recovered against it by the plaintiff, in the Circuit Court of Cook County, in an action which the plaintiff brought seeking to recover damages claimed to have been suffered by her as a result of injuries received when she fell through an iron trap door, located in a sidewalk in the City of Chicago.

Following the accident which the plaintiff experienced, she caused a notice to be served on the City. This notice was signed by her and in it she stated that on September 22, 1921, about ten o'clock in the evening, "the undersigned was injured by the falling of a trap door or areaway entrance in and upon the sidewalk on West Roosevelt Road in the City of Chicago, to-wit, at or near street number 3311 West Roosevelt Road, Chicago, Illinois. * * * You will further notice that the undersigned resides at 3726 Cottage Grove avenue, Chicago, Illinois, and that her physicians and surgeons are Dr. Samuel Sinkler, 3424 W.

Roosevelt Road, and Dr. L. E. Halperin, 1301 N. Western avenue." This notice was dated October 11, 1921.

In support of its appeal the defendant contends that the notice was insufficient in that it failed to give the name of the person to whom the cause of action had accrued as the statute requires. We have had occasion a number of times to hold that such an objection as this is wholly untenable. The purport of the notice is plainly to the effect that a cause of action is claimed by the one signing the notice, who, according to the notice, is the person who was injured. It is also claimed that the notice was defective in that it gives the residence of the plaintiff as 3726 Cottage Grove avenue, whereas it is said the proof shows that she lived at 3724; and also that it gave the address of Dr. Halperin as 1301 N. Western avenue, whereas the proof shows that his correct address was 1300 N. Western avenue, and it is contended in this connection also, that there is a fatal variance between the declaration and the proof, as the declaration contains a copy of the notice, and thus has incorporated in it these allegations as to the address of the plaintiff and that of Dr. Halperin, which are at variance with the proof. In our opinion, the discrepancies noted are not such as to make the notice so defective as to defeat the plaintiff's action. 3424 and 3426 are adjoining numbers. As the plaintiff mentioned one in her notice and the other in her testimony, it may well be that both applied to a single entrance. As to the address of the doctor, while the plaintiff testified the doctor's office was at 1300 North Western avenue at the time she received

her injuries, which was three years prior to the time of the trial, the doctor was merely asked what his office address was at the time he was testifying and he gave it as 1301 North Western avenue.

Defendant also contends that the damages awarded the plaintiff, amounting to \$1200, were grossly excessive, as her injuries were trivial and the proof shows that she was absent from her employment only 5 or 6 days. On this question the proof shows that while the plaintiff was walking along the sidewalk with two other young women, they had occasion to walk across an iron trap door, which constituted a part of the sidewalk. This door was made up of two leaves, one slightly overlapping the other. As the plaintiff and her companions stepped upon one of these leaves, the ledge upon which it rested gave way and dropped them to the floor of the basement under the sidewalk, 8 or 9 feet below. As the plaintiff fell through the areaway her head struck one of the iron doors and she was dazed. She testified that she experienced "severe pains in my head and I was bruised quite a bit;" that she was absent from her employment 5 or 6 days and that on the day following the accident she was first treated by Dr. Halperin and that he continued to see her every day for about two weeks and that throughout the period of three years, between the time of the accident and the time of the trial she had seen this doctor at least every two weeks, the last visit having occurred on the Friday preceding the giving of her testimony. She testified that she continued to experience severe pains in her head; that "at times it seems as though something is

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hammering in my head all the time, especially when it rains; when the weather changes I am forced to lie in bed for 3 or 4 hours a day." She testified that she never had any trouble of this kind prior to her injury, and that since the accident she had experienced difficulty in keeping her mind on anything and also that she lost about four hours of sleep every night.

Dr. Halperin testified that he first treated the plaintiff the day following her injury and that from an examination he made of her at that time he found that "she was suffering from numerous bruises and contusions about the arms, body and legs; and had a hematoma on the head. A hematoma is a blood tumor." He testified that this swelling of the plaintiff's head was raised about three quarters of an inch; that the plaintiff complained of severe headaches, dizziness and a general feeling of weakness; that he saw her daily for two or three weeks and after that she came to his office "once every two, three or four weeks," and that her last visit to his office was about two or three weeks prior to the time of the trial. He was asked as to her present condition, and he testified that "her reflexes were somewhat exaggerated" when he made his last examination, which meant that her nervous system was irritated. He testified that a reasonable charge for all the services he had rendered was \$250.00. The plaintiff's sister testified that at the time of the plaintiff's injury her head was bruised and also her arm and foot.

[illegible][illegible]

When the plaintiff and her companions fell through the trap door in question, they were carried upstairs into the store, into the basement of which they had fallen, and someone called a doctor whose office was located nearby. This doctor testified that he examined the plaintiff at that time and found "a contusion and an edema in the temple parietal region," and that was all. He further testified that the extent of the edema referred to was "just a little swelling." This doctor also saw the plaintiff after she was taken to the home of her sister several hours later, and again the following day. He testified that he found nothing further in the way of injuries on either of those occasions; that he found nothing which in his opinion would lead to any permanent injury, and that on the following day the plaintiff wanted to go to work but he advised her to stay at home a few days.

On that evidence we are of the opinion that this court is not in a position to say that the damages awarded the plaintiff were excessive. The plaintiff was 20 years of age at the time of the trial of this case, which would make her 17 at the time of her injury. While the doctor who examined her on the night she experienced her fall and on the following day observed nothing but some apparently superficial bruises, the evidence shows that her own doctor found that the effect on her nervous system of those bruises and the fall, was such as to call for a continuance of his treatment of her throughout the period between the time of the accident and the time of the trial, which was three years.

When the Plaintiff and her mother left through the back door in question, they were carried upstairs into the room, into the bedroom at which they had fallen, and someone called a doctor who arrived was treated on way. This doctor testified that he examined the Plaintiff at this time and found "a contusion and an abrasion in the temple parietal region," and that she was "All. He further testified that the extent of the abrasion referred to was "just a little swelling." This doctor also saw the Plaintiff after she was taken to the home of her mother several hours later, and made the following statement: "He testified that he found nothing further in the way of injury on either of those occasions; that he found nothing which in his opinion would lead to any permanent injury, and that on the following day the Plaintiff seemed to be in good health but he advised her to stay at home a few days."

On that evidence we are of the opinion that this court is not in a position to say that the damages awarded the Plaintiff were excessive. The Plaintiff was 50 years of age at the time of the trial of this case, which would not have it at the time of her injury. While the doctor who examined her on the day she experienced her fall and on the following day observed nothing but some apparently superficial bruises, the evidence shows that her own doctor found that the injury on her nervous system of those bruises and the fall, was such as to call for a continuance of the treatment of her throughout the period between the time of the accident and the time of the trial, which was three years.

He was asked whether this nervous condition was permanent and he answered that he could not answer that question, yes or no. The plaintiff testified that even as late as the time of the trial, she continued to experience pains in her head and periods of dizziness as well as loss of sleep. On such evidence we do not feel we would be justified in disturbing the judgment because of the amount of the damages awarded.

The defendant makes the further contention that the verdict of the jury and the judgment appealed from, are against the manifest weight of the evidence, in that the proof shows that the City never had any direct notice of any defect in this trap door, and further, that the condition of the door and the sidewalk at this point, at and prior to the time of the plaintiff's injury, had not been such as to indicate that it was dangerous, and that, therefore, the City could not be charged with constructive notice of the condition which caused the door to give way.

On that point the plaintiff testified that as she walked along the sidewalk she did not see anything that would indicate that the door was out of order. One Horberg, who was the proprietor of the store, in connection with which this trap door was maintained in the sidewalk, testified that they never had occasion to use this door, which was an entrance to the basement of the store he occupied. He testified that every time one left his store and turned to the east, they would have occasion to walk over this trap door, and that he had occasion to do this several times a day. He was asked if the door appeared to him to be in good condition, and he

answered that he "didn't think it was in perfect condition." He was asked to be more particular and he testified "it was not very level; it was sunken in, in the center to a certain extent; a little bit, * * * about an inch or so,- it looked that way." He was asked if the ends of the doors met evenly and he answered that they did not, "one was a little bit higher, that is where the sunken part was in." He said the door had been in this condition about two months. This witness testified that after the accident to the plaintiff, he examined the ledge upon which the trap door rested and it "was all rotted away." He testified that he had never reported the condition to any department of the City of Chicago.

One Rosen, who lived across the street from the point at which the door in question was located and who ran over and helped get the plaintiff and her companions up into the store after the accident, testified that he had lived in that neighborhood for 15 years and had passed the place where the store was located a great number of times. He said that he had never stepped on the door as he passed, "it had a sagging appearance to it, sagged on one side * * * about an inch or so." He said the door had been in this condition two or three months at the time the plaintiff was hurt.

For the defendant, a Mrs. Horwitz testified that she lived within a door of the point at which the plaintiff was hurt, for some 5 or 6 years and was acquainted with the conditions there at the time in question, and that she walked by this place many times during the day and walked over this

door. In describing the door she testified that there were two half doors "made down with the sidewalk even, just like a book when you open, just like the sidewalk even. * * * it was level -- mostly level -- a quarter of an inch higher. * * * but it was always even, so much as I know."

On the foregoing evidence, referring to the condition of the sidewalk surrounding the trap door through which the plaintiff fell, we are of the opinion that the question of whether the conditions were such as to charge the defendant with constructive notice, so as to make it liable to one who was injured, was a question which the trial court properly left to the jury and this court cannot say their finding on that question is against the manifest weight of the evidence. The primary use of a public sidewalk is for the passage of pedestrians to and fro along the highway. An abutting property owner may not cut a hole through the sidewalk, and thus afford access to the basement of his premises and protect such opening by means of iron doors or other similar covering, without the express permission of the City. That situations of this kind involve elements of danger that are not present where they are not permitted to exist, is apparent. When the City chooses to permit some owner to create such a condition, the City must be charged with notice of the fact that the dangers, incident to the condition, are there, and the City will be required to exercise reasonable diligence so as to avoid injury to anyone making a proper use of the sidewalk as a highway. We are further of the opinion that a condition which may not be such as to amount to a constructive notice to the City if it

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attached to the sidewalk itself, by reason of the fact that it was not open to casual observation but latent or hidden, may nevertheless have the opposite effect and be sufficient to charge the municipality with constructive notice where it has to do, not with the sidewalk itself, but with such an opening as is involved here, which the City has permitted a property owner to create and maintain in the public highway.

As far as the sidewalk itself is concerned, most defects which give rise to a dangerous condition are open and apparent, but in the case of an opening through the sidewalk, with trap doors covering it, dangerous conditions may easily arise which create a higher degree of danger than the others just referred to but which are not open to casual observation and may only be found upon some inspection of the opening and the doors and the condition of the sidewalk immediately surrounding them.

But the evidence in the case at bar was sufficient to warrant the jury in believing that more than this was present here, for one of the witnesses testified that one of the leaves of this trap door had "a sagging appearance," and there is at least an intimation on the part of one of the other witnesses that when he passed by at this point he avoided crossing the door for that reason. The question of whether the condition of this door, under all this evidence, had been for a reasonable period prior to the plaintiff's injury, such as to charge the City with constructive notice of the condition of weakness which permitted the plaintiff to fall through the door and be hurt, was one for the jury, as

attached to the sidewalk itself, it would be the
 fact that it was not open to actual observation but
 instead of being, my understanding from the evidence
 effect and as a matter of fact the sidewalk
 with constructive notice that it was to be used with
 the sidewalk itself, but with such an opening as to
 involved here, which the City has permitted a property
 owner to create and maintain in the public highway.
 as for the sidewalk itself is a question, some believe
 which give rise to a dangerous condition in the road and
 dangerous, but in the case of an opening through the side-
 walk, with high doors covering it, dangerous conditions
 may easily arise which create a higher degree of danger
 than the others just referred to but which are not
 open to actual observation and may only be found upon
 some inspection of the opening and the doors and the con-
 dition of the sidewalk immediately surrounding them.
 But the evidence in the case at this time fails to
 warrant the jury in believing that such doors which are
 placed here, for one of the witnesses testified that
 one of the leaves of this door was not closed.
 experiment, and that is no basis of contention on the
 part of one of the other witnesses who also he stated that
 at this point he avoided crossing the door for this
 reason. The question of whether the condition of this
 door, under all these witnesses, has been for a reasonable
 period prior to the plaintiff's injury, such as to
 charge the City with constructive notice of the condi-
 tion of the door which caused the plaintiff to fall
 through the door and be hurt, was one for the jury, and

we have already stated, and, in our opinion, there is sufficient evidence to support their finding.

For the reasons stated, the judgment of the Circuit Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

we have already stated, and, in our opinion, there
is sufficient evidence to support such finding.

For the reasons stated, the findings of the
Board are hereby affirmed.

Very truly yours,
[Signature]

WATSON L. B. [Signature], [Title]

355 - 30108

ELMER BROWN,

Appellee,

v.

MILTON H. CALLNER, doing business as REALTY BUILDING & CONSTRUCTION COMPANY,

Appellant.

4987a
APPEAL FROM

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 659

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendant seeks to reverse a judgment obtained against him by the plaintiff in the Municipal Court of Chicago. The plaintiff's claim was for work done and material furnished in decorating a building owned by the defendant and located at 828 Winona avenue, in the City of Chicago.

It appears that the defendant was the owner of a number of buildings, and among them was the one involved in this case. At the time the case at bar was instituted by the plaintiff, he had completed three different jobs for the defendant on three different buildings, including the one in question. The plaintiff brought an action against the defendant, for the work done on one of these buildings, on October 7, 1924, returnable October 21, and in that case he recovered a judgment against the defendant for \$100 and costs on October 31. The plaintiff began the case at bar on October 14, 1924, returnable October 22, and judgment was entered in favor of the plaintiff on November 24. In finding for the

THE - 1886

REAR VIEW

REAR VIEW

V.

WILLIAM M. CALHOUN, Esq.
JAMES M. CALHOUN, Esq.
JAMES M. CALHOUN, Esq.

Applicant

2401A.659

Opinion filed Jan. 20, 1886.

THE REAR VIEW OF THE BUILDING

BY THE COURT.

By this appeal the defendant seeks to reverse a judgment rendered against him by the plaintiff in the year 1884. The plaintiff's claim was for work done and material furnished in constructing a building owned by the defendant and located at 208 Fifth Avenue, in the City of New York.

It appears that the defendant was the owner of a number of buildings, including the one now located at 208 Fifth Avenue. At the time the same was now located at the plaintiff, he had completed about one-half of the building and was about to commence the construction of the other half. The plaintiff brought an action against the defendant on a contract for work done and material furnished in constructing the building, and the same was done on the 1st of March, 1884. The plaintiff's claim was for the value of the work done and material furnished, and the same was done on the 1st of March, 1884. The plaintiff's claim was for the value of the work done and material furnished, and the same was done on the 1st of March, 1884. The plaintiff's claim was for the value of the work done and material furnished, and the same was done on the 1st of March, 1884.

plaintiff the trial court specifically found that the plaintiff had done, "separate and distinct work on separate and distinct buildings at separate and distinct stipulated prices on each building," and the court held that where he had brought his action on the building involved here, for a stipulated amount under a stipulated contract, it was not necessary for him to consolidate his claim with others he might have for work done and material furnished on other buildings owned by the defendant.

The only contention made by the defendant in support of his appeal is that the plaintiff had in substance but one claim against him, and such being the case, it was incumbent upon him, if he chose to institute an action against him, to sue for the entire amount he contended was due on such claim; and inasmuch as he had seen fit to bring a prior action for only a part of that claim, namely \$123.00 claimed to be due on another building, in which prior action he had recovered a judgment for \$100, the trial court should have found for the defendant and entered judgment accordingly, holding that the plaintiff was precluded from any further recovery on his claim, by the judgment previously recovered by him.

In support of his contention, the defendant has called our attention to a number of cases, but we shall not refer to all of them. Lucas v. LeCompte, 42 Ill. 303; Rosenmuller v. Lampe, 89 Ill. 312; and Nickerson v. Rockwell, 90 Ill. 460, are typical. The Lucas case involved a statute providing that in all suits commenced before a justice of the

peace, "each party shall bring forward all his or her demands against the other, existing at the time of the suit, which are of such a nature as to be consolidated and which do not exceed one hundred dollars when consolidated, into one action or defense; and, on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for such a debt or demand." The plaintiff in that case was a lawyer who had a demand for services, earned in that capacity, which was made up of several items. Instead of bringing suit for the entire amount of his demand, he sued for only part of it, and recovered a judgment, and it was held that he could not thereafter sue for the balance.

The Rosenmueller case is to the same effect, but in the opinion of the court in that case no mention is made of the statute referred to in the Lucas case, although the court cites the Lucas case in support of its decision. In the Rosenmueller case the court said that "the rule is fully established, that an entire claim, arising either upon a contract or from a wrong, cannot be divided and made the subject of several suits; and if several suits be brought for different parts of such a claim, a judgment upon the merits in either will be available as a bar in the other suits." In that case the plaintiff brought two actions for services rendered in two successive years and the court held that as both amounts had been due when the plaintiff sued for and recovered the amount claimed for the first year, he could not be permitted to recover in the action which he brought to recover the balance he

claimed to be due for the services rendered the following year, and the reason the court gave for that decision was that "the claim for the respective years' services must be considered as growing out of the one contract made in 1874".

In the Nickerson case the court again referred to the statute mentioned by the court in the Lucas case, and referred to the fact that counsel in the Nickerson case had urged that, independent of the statute, when one had two or more claims against another, of such a nature as to be consolidated, and when consolidated they exceed the jurisdiction of a justice's court, he must bring his action in a court of competent jurisdiction having jurisdiction of such consolidated amount, and if he fails to do this, and sues on one of such claims before a justice of the peace, he will be barred from bringing any action on the other claims, in any court. The court then said, "The common law is incorrectly stated by appellant. It properly applies only when there is one demand, - not where there are two or more claims or demands."

In a later case cited by the plaintiff, McBole v. McBole, 106 Ill. 452, the Supreme Court said, "It may be regarded as a uniform and well settled rule of law that a party cannot split an entire cause of action, and bring two or more suits to recover different portions of the same debt. This rule is founded on a sound principle of public policy, which forbids the commencement and prosecution of vexatious law suits. Where a demand is entire, no reason can be perceived why it should be split up into two or more

1874.

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actions, and thus subject a debtor to the payment of useless and unnecessary costs. But the question to be determined here is, whether the demand in question, within the meaning of the law, is to be regarded as entire, or is it capable of division into two separate and distinct causes of action."

It is the defendant's contention in the case at bar that the claim of the plaintiff was a single, entire claim and that his only reason for bringing his successive suits was to get within the jurisdiction of the Small Claim Division of the Municipal Court of Chicago. In our opinion, that contention is not borne out by the record. The trial court expressly found that the plaintiff had done separate jobs on separate buildings owned by the defendant, under distinct agreements between the parties. We are not able to say from our examination of the record that this finding of the trial court was against the manifest weight of the evidence. We find nothing in the record to show that the agreement made for the work and material furnished by the plaintiff on the building on Winona avenue, on which this action was brought by the plaintiff, was in any way connected with any of the other buildings on which the plaintiff was to furnish work and materials and which were owned by the defendant.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

264 - 30117

H. E. MCCORMICK,

Appellee,

v.

S. SIMPSON,

Appellant.)

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 659

Opinion Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

This was a forcible entry and detainer proceeding heard by the trial court without a jury. At the conclusion of the hearing the court found the issues for the plaintiff and entered judgment in his favor for possession. To reverse that judgment the defendant has perfected this appeal.

In support of his appeal the defendant makes some contention to the effect that the premises in question were not the property of the plaintiff. It is elementary that a tenant will not be heard to question the title of his landlord. The defendant himself testified that he rented from the plaintiff under a verbal agreement calling for \$25.00 a month as rent. He may not take that position and at the same time contend that his landlord did not own the property which he had rented from him.

The defendant makes the further contention that the landlord entered into an oral agreement with him to the effect that he, (the defendant) was to make certain repairs and reimburse himself by deducting the amount paid for the repairs

188 - 188

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from the rent. The defendant gave testimony to that effect; and further testified that he had been in the premises, under his agreement with the plaintiff, for three months, and had paid the rent for that period at the stipulated amount of \$25.00 per month. On the other hand, the plaintiff testified that the defendant had been a sub-tenant of the premises under a prior tenant and the plaintiff had been obliged to put that former tenant out, and at that time, because of his wife's illness the defendant urged the plaintiff to permit him to remain in the premises, and the plaintiff testified that he then told the defendant that if he would pay \$25.00 a month, "and do any and all repairs he might need himself," he might remain and that the defendant replied that "he would take it under those conditions and make his own repairs."

At the conclusion of the testimony the court referred to that given by the plaintiff and commented on the fact that the defendant had been in possession over three months and had made certain repairs, which the defendant testified cost him from \$50 to \$75. And the court further pointed out that the fact that the defendant had paid his rent for the time he had been in possession, deducting nothing for the repairs he claimed to have made, indicated that the plaintiff's theory was correct, to the effect that the defendant was to pay \$25.00 a month and make such repairs as he cared to make, in addition to that.

In order to reverse the judgment appealed from this court would have to be in a position to say that it was against the manifest weight of the evidence, and that, in our opinion, we are not in a position to do, from the

from the fact. The defendant gave testimony to that effect,
and further testified that he had been in the hospital, under
his agreement with the plaintiff, for three months, and
had paid the cost for his care at the estimated amount
of \$40.00 per month. In the other trial, the plaintiff testi-
fied that the defendant had been a non-patient of the hospital
until a prior record and the plaintiff had been obliged to
pay that former amount and, as that fact, however, of
his wife's illness the defendant argued the plaintiff to
permit him to remain in the hospital, and the plaintiff
testified that he then told the defendant that if he again
was ill, he would not, "and on any and all terms he might
need himself," he might remain and that the defendant re-
plied that he would take it upon their condition and was
the one condition."

As the conclusion of the testimony the court re-
turned to that given by the plaintiff and commented on the
fact that the defendant had been in hospital care three
months and had made no other effort, when the defendant
testified that he had paid \$40.00 to the plaintiff, and the court further
commented that the fact that the defendant had paid the
money for the time he had been in hospital, was not
evidence for the purpose he claimed to have been, estimated
that the plaintiff's theory was correct, to the effect that
the defendant was to pay \$40.00 a month and that was the
price he was owed to him, in addition to that.

In order to reverse the judgment appeared from
this court would have to be a finding to pay that it
was against the plaintiff's right of the evidence, and that
in the opinion, we are not in a position to do, from the

state of this record.

It is the contention of the plaintiff that the defendant was in arrears one month's rent. Although he contended he had paid the rent for three months and told the court he could show receipts for his payments, when he produced the receipts they only covered two months' rent.

We find no error in the record and the judgment appealed from is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

STATE OF NEW YORK.

IN SENATE,

January 10, 1890.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE,

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE,

PASSED MAY 1, 1889.

ALBANY:

WILLIAM H. SAWYER, PRINTER.

273 - 30126

4989a
PEOPLE OF THE STATE OF ILLINOIS,
EX REL LEOPOLD SACHS,

Appellee,

APPEAL FROM

vs.

SUPERIOR COURT,

COOK COUNTY.

WILLIAM E. DEVER, et al,

Appellants.

240 I.A. 659

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion
of the court.

The relator, Sachs, filed a petition in the Superior Court of Cook County for a writ of mandamus, directing the respondents to issue a license to him to conduct a soft drink parlor at 5159 South Ashland avenue, in the City of Chicago. He had previously made the usual application for such a license and his application had been refused. The respondents filed an answer setting forth that section of the Municipal Code, giving the Mayor power to revoke a license when the person holding it violates any of the ordinances of the City, or statutes of the State, in the conduct of his business, and also the section of the Code giving the mayor discretionary power in passing upon applications for licenses. The answer denied that the petitioner was ready and willing to comply with all the ordinances of the City, as alleged in the petition, and also denied that he was a person of good moral character and reputation; and alleged that he had been found with intoxicating liquor in his possession on the premises for "use in connection with his business," in violation

of the ordinances of the City and Statutes of the State. No specific ordinance or statute is referred to in either the answer or the proof submitted by respondents, nor in the brief filed by them in this court. We may not take judicial notice of ordinances, but we do take such notice of statutes. Presumably, the prohibition act is the statute referred to. Counsel should not make reference to statutes generally but should point out the one relied upon. The evidence was heard by the court and the court found the issues in favor of the petitioner and ordered that a writ of mandamus issue, as prayed in the petition. From that judgment the respondents have perfected this appeal.

It is conceded by the parties that the granting or refusing of an application for a license such as that sought by the relator in the case at bar, is a matter lying within the discretion of the Mayor of the City, and that a writ of mandamus will not lie to direct the Mayor to exercise that discretion in a particular manner, except where it is proven the Mayor has acted arbitrarily and without investigating the facts involved, or has clearly abused the discretion reposed in him. The respondents contend that the facts shown by the evidence did not make out a clear case of abuse of discretion in the action which the Mayor took in refusing the application made by the relator for his license; while the relator contends, on the contrary, that the evidence made out a case of abuse of discretion on the part of the Mayor, with that degree of clearness which is necessary before the courts will interfere in such matters.

The relator testified that prior to 1919, he had been a saloon-keeper, but that prohibition had put him out of business. He admitted that he had conducted what is commonly known as a soft drink parlor on the premises in question prior to the time of the application for the license involved here, and that in October 1923, police officers of the City came into those premises and found liquor hidden in a private stairway, leading up from the lower floor to the second floor where the relator lived. He further admitted that on that occasion he was placed under arrest and prosecuted in the Municipal Court of Chicago, and when it appeared at that hearing that the officers had not been in possession of a search warrant, the evidence which had been given was stricken and he was discharged. In describing the premises the relator testified that "the saloon is downstairs and my rooms are upstairs. There is a stairway leading from the saloon up to my rooms." He also testified that the stairway was the one that he used personally, leading up to his private rooms, and nobody else used it; and in order to get to this stairway, "I had to go back behind the bar." The relator further testified that the officers found some liquor in this stairway, - "I had a bottle that was my liquor, but I do not know who put it in there. I am not the owner of the liquor that was found in the private stairway."

It appeared that the relator had a partner whose name was Kohlman, at the time of making the application in question. The relator testified that Kohlman was not his

The witness testified that prior to 1919, he had been a saloon-keeper, but that prohibition had put him out of business. He admitted that he was somewhat what is commonly known as a half-breed person on the premises in question prior to the time of the prohibition for the license involved here, and that in October 1907, police officers of the city were sent down stairs and found liquor hidden in a private stairway, leading up from the lower floor to the second floor where the witness lived. He further admitted that on that occasion he was placed under arrest and prosecuted in the Criminal Court of Chicago, and that he appeared at that hearing that the officers had not come in possession of a search warrant, the evidence which had been given was untrue and he was discharged. In describing the premises the witness testified that "the saloon is down stairs and my house is upstairs. There is a stairway leading from the saloon up to my house." He also testified that the stairway was the one that he used exclusively, leading up to his private rooms, and nobody else used it; and in order to get to this stairway, "I had to go back behind the bar." The witness further testified that the officers found some liquor in this stairway, - "I had a bottle that was my liquor, but I do not know who put it in there. I am not the owner of the liquor that was found in the private stairway."

It appeared that the witness had a private room where was hidden, at the time of making the application in question. The witness testified that Collins was not his

partner at the time the liquor was found on the premises. He also testified that the application for the license involved in these proceedings was not made by him but by Kohlman. There was a hall, in connection with the relator's premises, which he testified he used for the meetings of societies, and he stated that it was his intention to sell pop, near-beer and sandwiches.

One Radden testified for the respondents that an application had been submitted for a license for the operation of a soft drink parlor on the premises in question, and he had made an investigation and recommended that the license be not issued, because a former license had been revoked. He testified he knew nothing against the character of the relator beyond that.

A sargeant of police and two officers testified that they went into the premises in question, in which the relator was operating a soft drink parlor, in the forenoon of October 20, 1923; that they opened a door leading from the bar to a stairway, and in a secret compartment formed by a hinged step, which was the third step up from the bottom of the stairway, they discovered a compartment in which they found a "bottle containing a half pint of moonshine whiskey," and also a teapot; that "it was in the stairway. I had to go out of the main saloon part or the soft drink parlor part to get into the stairway to find it. The half pint bottle was in the same compartment with the teapot. I talked to Sachs about that. I asked him and he said he did not know how it got there. I found in that hallway a teapot partly filled with moonshine whiskey and a bottle * * *

together as the same and those who lived on the premises.
We also recalled that the investigation for the purpose
involved in these proceedings was not made up of the fact
of looking. There was a bill, in connection with the
company's business, which he recalled he paid for the
purpose of collecting, and he stated that it was his
intention to sell the same, and that he had done so.

The witness testified for the purpose of the fact
that he had been advised that a bill for the
purpose of a bill for the purpose of the same is that
the same was not made up of the fact of the same being
the same as not made up of the fact of the same being
the same. He stated that he had collected against the
company of the same before the fact.

A witness of police and two others testified
that they went into the business in question, in which the
business was operating a bill for the purpose, in the business of
October 22, 1910, and they opened a bill for the purpose of the
fact of a bill, and in a bill for the purpose of the fact of a
bill for the purpose, which was the same as the same being
of the same, they delivered a bill for the purpose of the fact of
the same containing a bill for the purpose of the fact of the same
being, and also a bill, and it was in the same way.
I had to meet at the same time as the same being at the same time.
Below that we had into the same way to find it. The bill
that was in the same way as the same being at the same time, I
failed to make good that. I asked him and he said he did
not have the bill. I found in the bill a bill
not being filed with the same being a bill and a bill.

To the best of my belief the vessels contained moonshine whiskey * * * It had an alcoholic smell. This is generally called moonshine. It was not good whiskey. The compartment that I found this liquor in was about the third step in the stairway and was hinged. I lifted it up and there was a compartment therewith the bottle and the teapot there."

It is well settled that a writ of mandamus will not issue unless the petitioner shows a clear legal right to the writ and unless the party applying shows a clear obligation on the part of the party against whom the writ is sought, to do the thing which the petitioner seeks to have performed. Yates v. The People, 207 Ill. 316; The People v. Blair, 292 Ill. 139. Where the law designates a public officer as the one to receive an application for such a license as is involved here, and act upon it, and in so doing to exercise his discretion, and in such circumstances the officer denies the application, even though a court might be of the opinion that, acting as such officer, it would grant the permit, it would not follow, so long as there is latitude for the exercise of a sound discretion, that the act of refusal would be arbitrary or capricious. The law does not contemplate a transfer of the officer's function to a court or that the court shall sit in judgment on the exercise of his power, unless it is arbitrarily or capriciously exercised. People v. Schuettler, 209 Ill. App. 588.

In our opinion, the evidence in the case at bar to which reference has been made does not show a clear right on the part of the relator to the license for which he made

to the point of my having the necessary qualifications to be
 eligible " " " It had no doubt been made, this is generally
 subject mentioned. It was not made, however, it was
 made that I had this right in my mind the first time
 in the country and was happy. I liked it up and down
 was a comparison between the parties and the subject matter.

It is well known that a suit of evidence will
 not have value for testimony when a clear legal right
 to the suit and where the party applying for a clear
 satisfaction on the part of the party applying for the suit
 be made, in the same way the evidence seems to
 have been made. Ex parte v. The People, 100 N.Y. 100
Ex parte v. The People, 100 N.Y. 100. Where the law requires
 a party to file in the case in order to establish the
 suit a license as is required here, and not here it,
 and in no way to carry on his business, but in such
 circumstances the officer makes the application, even
 though a court might be at the expense of it, saying no
 more often, it would seem that the law would not
 follow, so long as there is failure for the service of
 a second direction, that the suit of interest would be ex-
 tinguished or completed. The law does not require a trans-
 fer of the title to the court as a matter of fact the court
 will sit in judgment on the merits of the case, unless
 it is clearly an unconstitutionally exercised. Ex parte v.

Ex parte v. The People, 100 N.Y. 100.

In the case of the evidence in the case of the
 so with reference to the law does not seem a clear right
 on the part of the officer to the license for which he asks

application, nor does it show that in denying his application, the Mayor of the City exercised the discretion reposed in him by the law, arbitrarily or capriciously. We are, therefore, of the opinion that the evidence is not such as to warrant the finding made by the trial court and that court erred in entering its judgment that the writ of mandamus prayed for, be issued.

For the reasons stated the judgment of the Superior Court is reversed.

JUDGMENT REVERSED.

TAYLOR, J. CONCURS;
O'CONNOR, J. DISSENTING:

It appears from the brief filed on behalf of the defendants in this case that the Mayor of the City refused to issue Sachs a license for the alleged reason that Sachs had been violating the ordinances of the City of Chicago and the statutes of the State. No ordinance is pointed out in the brief, which it is contended Sachs was violating; nor is any statute of the State pointed out in this regard. Where it is sought to reverse a judgment of a court, it is not sufficient merely to say that one of the parties has violated the laws of the State and the ordinance of the city. The particular ordinance should appear in the record and be pointed out in the argument, so also should the particular statute be pointed out so that this court can see whether the evidence in the record warrants the con-

the defendant in this case that the letter of the 11th
refused to leave behind a license for the alleged transfer
that he had been violating the contract of the city
of Chicago and the nature of the crime. An admission is
pointed out in the letter, which it is contended that the
violating; not is any transfer of the crime pointed out in
this regard. There is no attempt to reverse a judgment of
a court, it is not sufficient merely to say that the
crime has violated the law of the state and the evidence
of the city. The defendant witnesses should appear in the
court and be pointed out in the argument, so also should
the particular statute be pointed out so that this court
can see whether the evidence in the record supports the law.

clusion that the ordinances or the statutes have been violated. It is not the duty of this court to search through the statutes of the State in an endeavor to find out whether they have been violated. But it is the duty of counsel to point out specifically what law they contend has been violated. This has not been done in this case in any respect. All that appears, as stated by counsel for the defendants in their brief, is "The evidence shows that the petitioner was engaged in the operation of the premises at the time intoxicating liquors were being sold there, and that, therefore, the petitioner is not a person of good moral character and has violated the State laws and City ordinances relative to the sale of intoxicating liquors and consequently is not a proper person to be granted the license aforesaid." There is no evidence in the record that any intoxicating liquors were being sold on the premises, but all of the evidence is to the contrary. People v. Huss, 222 Ill. App. 638 (not reported in full). Again counsel for the city state in their brief on this point "The evidence clearly shows that the petitioner was the owner of the premises and was operating the premises at the time the liquor was found there by the police officers. Therefore, it is clear that the petitioner, Sachs, was violating the statutes of the State of Illinois and that the Mayor was justified in refusing to grant the license - in fact, it was his clear legal duty to refuse to grant the license." From the two quotations just made, and this is all that is said in the brief filed on behalf of the defendants, it appears that the defendants' contentions are

(1) that the evidence showed that there was intoxicating liquor sold on the premises; and (2) that intoxicating liquor was found on the premises. As stated, there was no evidence of any sale and no statute is pointed out that made it a crime or misdemeanor for him to have liquor upon his premises.

The majority opinion says that the evidence shows that Sachs had been guilty of a violation of the provisions of Sections 1 to 49, both inclusive of Chapter 43 of the Revised Statutes, which is the entire prohibition act. Of course, if one reads this statute, it is obvious that such a contention is unsound. A number of sections of that chapter contain provisions that render the possession of intoxicating liquors not unlawful under a number of circumstances. Moreover, I have some difficulty in understanding how Sachs has violated, for instance, Sections 1, 15, 16, 17, 27, etc., as the majority opinion holds he has done. A mere glance at these sections, and many others of the act will demonstrate, in my judgment, the unsoundness of the majority opinion and the difficulty a court may get into in attempting to find some alleged error, which is in no manner pointed out, upon which to base a reversal. But, as I have stated, the act is quite complicated and it is not the duty of this court to search through the statutes to find out whether some provision of them have been violated, where it is contended that by reason of the violations of the statute of the state, the judgment should be reversed. We must presume that the judgment is correct in all cases.

The law in this State has long been clearly settled

(1) that the evidence showed that there was information
about the case; and (2) that information
about the case was found on the computer. It stated, there was
no evidence of any case and no evidence in connection with that
case is a crime or punishment for him to have found
upon his premises.

The majority opinion says that the evidence shows
that there was some guilt of a violation of the provisions
of section 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

to the effect that where a case is brought to a court of review and the judgment of the lower court is sought to be reversed, the burden is on the one who seeks to have the judgment reversed, to point out wherein it is wrong. Kiesh-Kowski v. Rostrom, 179 Ill. App. 73; C. & A. R.R. Co. v. Strawboard Co., 180 Ill. 268; Graham v. Dixon, 4 Ill. 115; Banfill v. Tryman, 172 Ill. 123. In the Rostrom case the court said (p.75) "The burden is always upon the party who avers error to make the same appear affirmatively. Nothing is to be presumed against a judgment. The error, if any is charged, must be definitely shown." In the Strawboard Co. case the court said in reference to the failure of the appellant to point out in the Appellate Court the objections claimed to have been made in giving instructions (pp 274-275) "Merely general statements that a ruling is wrong, without any attempt to point out wherein the error consists or to advance any reason or argument in support of the simple assertion that error has occurred, discloses nothing to adverse counsel, and does not impose upon a court of review the duty of instituting an investigation of the record to ascertain if error of some nature or kind may not be found." In the Dixon case the court said, (p.117) "Nothing is to be presumed against a judgment, but the inference is, that it is right, until the contrary appears." To the same effect is the Banfill case where the court said, (p.124) "Appellant has not, in his brief, pointed out any supposed error in admitting or rejecting evidence, and the assignments of error in that regard are abandoned." And in the case of Lanyon v. Michigan Buggy Co., 94 Ill. App. 243, it was held that counsel who claimed error had been committed

to the effect that when a case is brought to a court of
review and the judgment of the lower court is shown to
be erroneous, the burden is on the one who seeks to have the
judgment reversed, to point out wherein it is wrong. Smith v. Smith, 175 Ill. 401, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

on the trial, must specially point out such alleged error. Likewise we held in the case of Bogert v. Chalmers & Williams, 207 Ill. App. 457, that any error complained of on appeal must be specifically pointed out in the brief. It is also the law that a court of review will not examine the record to find grounds for reversing, but may do so to find reasons for affirming the judgment. Shreffler v. Fuller, 208 Ill. App. 630.

[illegible]

388 - 30139

WOODLAWN MOTOR CAR SALES & SERVICE
CO., a corp.,

Appellant,

v.

DENNIS J. EGAN, Bailiff et al,

Appellees.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 660

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the
opinion of the court.

One Joseph N. Pepin, the owner of a Paige automobile, executed a chattel mortgage on it, to secure a balance due in connection with its purchase. At the time in question a balance of \$227.00 remained due under the chattel mortgage. One Thomas Vanderwarfe procured a judgment in an action brought by him against the owner of the automobile, and on an execution issued on said judgment, the automobile was taken in possession by the defendant Egan, as Bailiff of the Municipal Court of Chicago. Thereupon, the plaintiff Woodlawn Motor Car Sales & Service Co., declared the balance remaining unpaid on the chattel mortgage it held, due, under the insecurity clause of the mortgage and this action of replevin was brought, with Egan and Vanderwarfe as parties defendant. The car was taken under the writ of replevin, from the defendant Egan.

THE UNITED STATES OF AMERICA
OF NEW YORK

In SENATE

1936

REPORT OF THE

COMMISSIONER

1936 A. I. 660

Opinion filed Jan. 30, 1936.

THE COMMISSIONER OF THE

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Plaintiff alleged in its declaration that the automobile had been wrongfully taken and was being wrongfully detained by the defendant Egan. To this declaration the defendant Egan filed a plea denying the wrongful taking alleged, and also another plea denying that he was wrongfully detaining the car, and further, a plea denying that the automobile was the property of the plaintiff. The defendant Vanderwarfe filed pleas similar to the first two filed by the defendant Egan, and also a third plea alleging that the automobile was the property of Vanderwarfe, and another plea alleging that Vanderwarfe "did, before the commencement of the replevin action, tender and offer to pay to the plaintiff \$237.00, the amount due under the mortgage executed by Joseph H. Pepin and held by the plaintiff." The plaintiff took appropriate issue on these several pleas, including the last one. The issues thus formed were heard by the trial court, after which a finding was entered against the plaintiff, on the issue of the tender. Judgment was accordingly entered, directing that the automobile be returned by the plaintiff. From that judgment the plaintiff has perfected this appeal.

In support of its appeal the plaintiff contends that the plea of tender presented an immaterial issue and should have been demurred to, but the fact that a replication was filed denying the tender, did not cure the defect. In our opinion the plea did not present an immaterial issue. As far as the mortgage is concerned, the only right it gave the plaintiff was a lien on this automobile, to secure the

payment to the plaintiff of the balance remaining due on the mortgage. If the plaintiff received that amount it had no further interest in the automobile. Such a tender was made to the plaintiff and refused. So far as the issue raised by the plea of tender is concerned, we are of the opinion that the trial court did not err. On the trial of this case all the evidence on this issue was received on the theory that the plea was proper for issue was duly joined on the plea, and the plaintiff will not be permitted to change its position, after coming to this court on appeal. Although some other matters seem to have been raised in the trial court, no argument is presented about them in this court and they must, therefore, be considered as waived.

For the reasons stated, the judgment of the Superior Court is affirmed.

JUDGMENT AFFIRMED.

O'CONNOR, J. CONCURS;
TAYLOR, J. DISSENTS.

present to the knowledge of the witness preceding the
the mortgage. If the plaintiff received the money in fact
he thereby satisfied the mortgage. That is what the
case is the plaintiff was told. He was told that
raised up the idea of a mortgage is incorrect, so we at the
again that the idea was not one, by the way.
is this case all the evidence in this case was received
as the County that the idea was not one. The idea was not
found on the case, and the plaintiff will not be permitted
to make the mortgage, which is not to be made by the
although some other evidence was not taken in the
trial court. We suppose it is unnecessary to say in this
case that they were, therefore, we assumed to be true.

But the witness stated, the judgment of the

Superior Court is affirmed.

FORREST WILSON.

Witness, J. O'Connell,
Witness, J. O'Connell.

304 - 30157

EDWARD E. COLLINS,

Appellee,

v.

E. F. FOURNIER AND MINNESOTA
MUTUAL LIFE INSURANCE CO.,
GARNISHEE,

MINNESOTA MUTUAL LIFE INSURANCE
CO., GARNISHEE,

Appellant.

APPEAL FROM

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 660

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the
opinion of the court.

The plaintiff Collins brought an attachment suit of the fourth class in the Municipal Court of Chicago, against one Fournier, the basis of the attachment being that the defendant was a non-resident. A writ of attachment was issued on September 27, 1924, against Fournier as defendant and the Minnesota Mutual Life Insurance Company, as garnishee. This writ was served on the Insurance Company on September 29, 1924. No service being had on Fournier, publication was made as to him, and he was defaulted on November 24, 1924. On the same day, the court assessed the plaintiff's damages at \$418, on the affidavit of claim he had filed; and also entered a conditional judgment against the garnishee for that amount, and directed that a writ of scire facias issue, as provided by law.

304 - 2014

BRUCE A. COLLIER

appealed

at

A. J. THOMAS AND ASSOCIATES
ATTORNEYS AT LAW
CHICAGO, ILL.

KINDERGARTEN SCHOOL FOR BOYS
CHICAGO, ILL.

appellee

LEGAL FEE

OVER \$100.00

IN CHARGE

2401 A. 000

Opinion filed Jan. 20, 1936.

MR. THOMAS AND ASSOCIATES

opinion of the court.

The plaintiff claims that the defendant

is the owner of the property and that the

defendant is the owner of the property and that the

defendant is the owner of the property and that the

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defendant is the owner of the property and that the

The writ of scire facias was issued under date of November 25, 1924, and was served on the garnishee on December 2, 1924. The answer of the garnishee was filed on December 29, 1924. By its answer the garnishee set forth that at the time of the service of the writ of scire facias it was not indebted to the defendant in any amount and held no property, moneys or credits of his in its custody or possession. The garnishee further set forth in its answer that prior to November 20, 1924, the defendant Fournier had been employed as its general agent under a contract, copy of which was attached to the answer, and that on that date said contract was cancelled and terminated; that at the date of such cancellation, no amounts were owing from it to Fournier and that no commissions were or would be payable to him under the contract; that at the date of the termination of the contract, Fournier was indebted to it in the sum of \$1521.96, and that he had continued to be indebted to the garnishee in that amount, ever since.

Under the terms of the contract attached to and made a part of garnishee's answer, said contract being entered into between the garnishee and Fournier, under date of January 22, 1924, Fournier was made the general agent of the garnishee Insurance Company, at San Francisco; and in consideration of the services to be rendered by him, the company agreed to pay him certain specified commissions upon all premiums collected by the company. Under the terms of the contract the company further agreed to pay Fournier "for general agency expenses during the continuance of this con-

tract in proportion to the company's business an expense allowance" of \$6.00 on every \$1,000 of the first \$500,000 of business sent in by him, in any one contract year, and \$3.00 on every \$1,000 of business over and above that amount. This paragraph of the contract then provided that "against said allowances the company agrees to advance the general agent Two Hundred and Fifty Dollars (\$250) per month payable in two equal monthly installments on the 15th and last days of each month. The general agent promises and agrees to pay the company, upon the anniversary date hereof in each year or upon the earlier termination hereof, an amount equal to the advances made hereunder, less the amount of expense allowance actually earned by the general agent under the terms hereof." It will not be necessary to note here the many other provisions of the contract.

On January 8, 1935, the plaintiff filed certain interrogatories and the garnishee was ruled to answer them within fifteen days. On January 19, 1935, the garnishee filed its answers to the interrogatories which had been filed by the plaintiff. These answers were to the effect that up to November 20, 1934, Fournier had been the general agent of the garnishee Insurance Company at San Francisco, under a written contract, copy of which was attached to and made a part of the garnishee's answers to the interrogatories; this being the same contract above referred to, which was made a part of the answer filed by the garnishee in response to the writ of scire facias. The answers of the garnishee to the interrogatories of the plaintiff, further set forth

On January 9, 1954, the classified files contain information and the following was noted in regard to the above listed date. On January 11, 1954, the following list of names for the investigation was obtained:

Listed by the classified. These names were in the list that was in January 10, 1954, January 11 and January 12, 1954, of the following information: January 11, 1954, under a certain number, copy of which was attached to the case a part of the classified's letter to the investigation. This being the same number above referred to, which was a part of the letter filed in the file in response to the list of white names. The names of the members of the organization of the classified. Further was found

that on September 27, 1934, (the day of the issuance of the attachment writ) Fournier was indebted to the garnishee in the sum of \$1496.50, on account of advances made to him under his contract for agency expenses, the amount of said indebtedness being the excess of advances over the expense allowance to which he was actually entitled under the terms of his contract on the business sent in to the company by him. In its answers to the interrogatories, the garnishee set forth further, that on December 18, 1934, Fournier was indebted to the garnishee in the sum of \$1561.13, and that on January 6, 1935, this indebtedness amounted to \$1567.73. The garnishee further answered that it had paid Fournier nothing since September 27, 1934, and that at said date he had previously received all commissions and premiums theretofore collected through his office, with the exception of two policies, the premiums for which had been paid to the Company by Fournier under date of January 5, 1935, he having deducted from his remittance his commissions on those premiums. The garnishee further stated that these two policies were unfinished business, pending at the time the company terminated its contract with Fournier in November, and it stated that it had no knowledge of the time when Fournier had actually delivered these policies and collected the premiums from the insured. One of these premiums amounted to \$16.13 and the other to \$15.35.

Under date of January 19, 1935, the garnishee filed an amended answer, again setting up the cancellation of its contract with Fournier on November 20, 1934, and stating that

that on September 17, 1944, (the day of the execution of
the defendant) (1) defendant was indicted on the charges
in the case of 1944-80, on account of defendant's death
his mother his father his brother his sister, the names of
said individuals being the names of defendant's mother
expressed defendant's name as was actually written upon
the terms of his contract on the defendant's name as
company by him. In the papers to the defendant, the
names were set forth further, that on September 17, 1944,
defendant was indicted on the charges in the case of
1944-11, and that on January 8, 1945, this indictment
remained in 1945-73. The defendant further advised that
it had paid to defendant nothing since September 17, 1944, and
that at said date he had previously received all compensation
and promised defendant nothing further. His sister, who
the execution of two children, the names of which are
been paid to the company by defendant since date of January
8, 1944, he having collected from his mother the same
amount as these payments. The defendant further stated
that these two children were married persons, living
at the time the company received the money as
defendant is married, and is stated that it had no further
right of the time when defendant had actually received money
which was collected the money from the company. The
of these persons according to 1944-11 and the money to 1944-11.
that date of January 11, 1945, the defendant filed
an amended account, again stating up the cancellation of the
contract with defendant on November 20, 1944, and stating that

at that time as well as at the time of the service of the writ of agere facias upon it, no amounts were owing from it to Fournier, but, on the contrary, he was indebted to the company in the sum of \$1567.72.

On interrogatories filed by the plaintiff and the answers thereto by the garnishee, the trial court found the issues against the garnishee and found that there was due and owing to the defendant, Fournier, from the garnishee, the sum of \$500. Under date of February 13, 1925, judgment was entered against the garnishee in the sum of \$439.20. Other proceedings were subsequently had in the trial court, which it will not be necessary for us to consider on this appeal, which the garnishee has perfected from the judgment entered against it.

On this record, we are of the opinion the trial court erroneously entered judgment against the garnishee. In support of the judgment appealed from the plaintiff has called our attention to a number of cases, and among them Gannon v. Tyree, 148 Ill. App. 99; Felsenthal Bros. & Co. v. Gradwohl, 217 Ill. App. 170; and Hall v. Bird-Bergstrom Motor Car Co., 227 Ill. App. 587. In our opinion, these cases are all clearly distinguishable from the one at bar. These cases were all actions brought by an agent against his principal, to recover advances which it was alleged the principal had undertaken to pay without regard to the amount of business done by the agent, although it was provided that the advances were to be charged against the commissions earned by the agent on the business done by him. In each of the cases re-

1-

Age 97%

On this morning, we are at the office of the
County Commission, and we are looking at the
report of the Commission on the
subject of the proposed new
law which was adopted at a meeting of the
County Commission on the 10th of
January, 1911. The report is
very interesting and we are
looking at it very carefully.
The report is divided into two
parts. The first part is
a general statement of the
facts of the case. The second
part is a statement of the
Commission's conclusions and
recommendations. The Commission
concludes that the proposed
law is not in the public
interest and recommends that
it be rejected. We are
looking at the report very
carefully and we are
discussing it very
thoroughly.

ferred to it was pointed out that under the contracts there involved, it was clearly not the intention of the parties that the amounts which the principal undertook to advance to the agent, from time to time, should be repaid to the principal in case the agent's commissions did not equal the advances. That is not at all the situation presented here. In the contract existing between the parties in the case at bar, the garnishee Insurance Company agreed to make Fournier an expense allowance for his general agency expenses, equal to a specified proportion of the business done by him. Not only did the contract between the parties provide that against that allowance the company would advance Fournier \$250 per month, but Fournier agreed to pay these advances back to the company at the end of each year, or earlier in case of the termination of the contract, deducting from such advances whatever amount of expense allowance the business done by him actually earned, according to the terms specified in the contract. According to the answers filed by the garnishee, no showing having been made to the contrary, the advances which the garnishee had made to Fournier largely exceeded the expense allowance to which he was entitled under his contract, at the time the original attachment writ was sued out, and this condition continued to exist at all times after that. It further appears that Fournier's agency contract was terminated by the company prior to the time the company filed its answer as garnishee, at which time he was likewise largely in debt to the company, for the excess of advances received by him over the amount of expense



I have to it was stated and took under the contract
 there involved, it was clearly not the intention of
 the parties that the agents should be retained upon
 their return to the agents, that they should
 be retained to the extent of the agents' services
 which did not cover the expenses. That is not at all
 the intention of the parties. In the contract making
 between the parties in the case at hand, the intention
 of the parties was to retain the agents in the service of the
 agents for the purpose of the agents, which was specified
 in the contract of the parties. The agents did not
 contract between the parties to the extent that
 the agents did contract with the parties to the extent
 that, but to the extent of the agents' services to
 the extent of the cost of each party, or neither in case of
 the retention of the contract, the parties to the contract
 the parties to the contract of the parties to the extent of
 the parties to the contract of the parties to the extent of
 his services to the parties, as stated in the contract in the
 contract. According to the contract filed by the parties,
 in making having been made to the contract, the parties
 and the parties had made to the parties to the extent of
 the parties to the extent of the parties to the extent of
 the parties, at the time the original contract was made
 and, and this contract contained no limit at all time
 after that. It further appears that the parties' agency was
 then was terminated by the parties to the extent of
 the parties to the extent of the parties, at the time the
 and the parties to the extent of the parties. For the reasons
 of the parties to the extent of the parties to the extent of

allowance to which, he was entitled. No payments of any kind were made to him by the garnishee after the date of the issuance of the attachment writ, disregarding the few dollars he retained when he remitted the Company's share of the two small premiums early in January; these policies representing business pending and unfinished at the time his contract was terminated.

In view of the fact that the contract between the garnishee and the judgment debtor was terminated, leaving the latter largely indebted to the garnishee prior to the filing of the garnishee's answers and all the other elements of the situation as disclosed by the answers filed by the garnishee to the interrogatories, we are of the opinion that at no time after the beginning of this action did the debtor have any claim which could have been enforced against the garnishee. That being the situation, the judgment entered by the trial court should have been in favor of the latter.

For the reasons given, the judgment of the Municipal Court is reversed.

JUDGMENT REVERSED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

known to which, he was entitled, as respects of the
first was made to him by the provision after the date of
the payment of the amount of the, notwithstanding the fact
of the retention of the property, the property, the date of
the two small provisions early in January, these provisions
representing business pending and retained of the date
the contract was terminated.

in view of the fact that the contract between
the parties and the payment of the property was terminated, leaving
the latter entirely subject to the provisions of the law
of the contract, the provisions of the law and all the other provisions
of the contract as amended by the contract filed by the
parties to the contract, as one of the parties that
as no time after the expiration of the contract and the contract
have any claim which could have been retained against the
contract. That being the situation, the judgment entered
by the trial court should have been in favor of the party.
The two provisions given, the judgment of the contract
court is reversed.

THOMAS J. BROWN.

THOMAS J. BROWN, JR., CLERK.

70,169
318 - 30169

CHARLES C. COSTELLO, a minor, by
Mark Costello, his next friend,

Appellee,

v.

THREE PRODUCTS COMPANY, a
corporation,

Appellant.)

4992
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 660

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the
opinion of the court.

By this appeal the defendant company seeks to reverse a judgment for \$3500.00, entered against it in favor of the plaintiff in the Superior Court of Cook County, in an action brought by the plaintiff, to recover damages resulting from personal injuries sustained by him, as a result of the alleged carelessness of an employee of the defendant, in driving an automobile truck. The plaintiff's declaration, consisting of one count, alleged that the driver of the defendant's truck, desiring to wash it at the fire hydrant in front of a City fire station, located on the west side of south Elizabeth street, just south of the east and west alley between 47th and 48th streets in the City of Chicago, drove the truck to that point and stopped along side of the west curb of the street, just north of the alley, with the truck facing south. The declaration alleged that the plaintiff, a minor eleven years old, was immediately behind and north of the

WILLIAM D. COOPER, a minor, by
his father, the said William D. Cooper,
Respondent,
V.
JAMES HENRY COOPER, a
Respondent,
Appellant.

240 I.A. 660

Opinion filed Jan. 30, 1936.

MR. JUSTICE THOMAS delivered the

opinion of the court.

By this appeal the defendant company seeks to
reverse a judgment for \$100, entered against it in
favor of the plaintiff in the Superior Court of Cook
County, an action brought by the plaintiff, to re-
cover damages resulting from personal injuries sustained
by him, as a result of the alleged negligence of an
employee of the defendant, in driving an automobile truck.
The plaintiff's contention, consisting of one count,
alleges that the driver of the defendant's truck, while
ing to wash it at the hydrant in front of a city
fire station, located on the west side of South Dearborn
street, just north of the east and west alley between 47th
and 48th streets in the City of Chicago, drove the truck
so fast that it stopped along side of the west curb of
the street, just north of the alley, with the truck facing
south. The defendant alleges that the plaintiff, a minor
eleven years old, was immediately behind and north of the

fear end of the truck as it stood at that point, and in such a position with reference to the truck that if it should be backed to the north without warning, he was liable and likely to be injured; and that the driver of the truck, negligently did back the truck to the north, without warning, while the plaintiff was in the exercise of ordinary care for his own safety, and struck the plaintiff, knocking him down and running over his left hand, inflicting the injuries complained of. Issue was joined by proper pleas filed by the defendant. The cause was tried before a court and jury and the jury found the issues for the plaintiff and assessed his damages at the sum of \$3500.00 Judgment being entered on that verdict, this appeal followed.

The plaintiff gave testimony supporting the allegations of his declaration, stating that just before he was hurt he was standing in the street just north of the truck, facing north; that he did not know the truck was going to move and heard no warning, either from the truck driver calling out or from any other signal; that the truck backed up about ten feet, striking against him and throwing him forward, to the north, on his stomach; and as he fell he threw out his hands at an angle of approximately 45 degrees, and as the truck backed up, the rear wheel on the west side ran over his left hand. He testified that after this happened and the truck came to a standstill, he scrambled out between the wheels of the truck, on the west side near the sidewalk. He said he did not have hold of the truck nor was he touching it at the time it backed up.

rear end of the truck as it stood at that point, and in such a position that it was not possible for it to be loaded as the driver testified, he was likely and likely to be injured; and that the driver of the truck, negligently and recklessly, and in the manner, without warning, while the plaintiff was in the exercise of ordinary care on the highway, and struck the plaintiff, knocking him down and running over his left hand, inflicting the injuries complained of. These were joined by proper pleas filed by the defendant. The court was then asked to grant a jury and the jury found the issues for the plaintiff and awarded his damages at the sum of \$100.00, judgment being entered on that verdict, and appeal followed.

The plaintiff's testimony respecting the circumstances of his declaration, stating that just before he was hurt he was standing in the street just north of the truck, looking north; that he did not know the truck was going to move and heard no warning, either from the truck driver calling out or from any other sign; that the truck backing up about ten feet, striking against him and throwing him forward, to the north, on his stomach; and as he fell he threw out his hands at an angle of approximately 45 degrees, and as the truck backed up, the rear wheel on the west side ran over his left hand. He testified that after this happened and the truck came to a standstill, he scrambled out between the wheels of the truck, on the west side near the sidewalk. He said he did not have hold of the truck nor was he touching it at the time it backed up.

At the time the defendant's driver arrived at the point where the accident happened, one Healy, a fireman attached to the first station above referred to, was washing his automobile at the fire hydrant. Apparently the defendant's driver stopped his truck north of the alley to wait until Healy had finished washing his car. Healy was called as a witness for the plaintiff and testified that he finished washing his car shortly after the defendant's driver arrived. He testified that when he was through washing his car, the defendant's driver, who had left his truck and walked over into the engine house, came out and walked back to his truck, apparently to drive it up to the fire hydrant; that he did not hear the driver say anything to anybody; that he (the witness) got into his car to move away from the fire plug, and "pulled up to the center of the street and then I heard them all hollering and a little boy got hurt."

Tony Albrecht, a boy about 12 years old at the time in question, testified that the plaintiff was standing about three feet back of the truck when it moved backward 8 or 10 feet, knocking the plaintiff down, face forward with his hands stretched out so that his left hand was run over by the back wheel of the truck; and that he did not hear any warning before the truck backed up and that the driver of the truck said nothing before he started the truck. The witness named several of the group of boys who were standing about at the time. He testified that he was standing on the curbstone near the rear end of the truck, with a boy named

THE UNIVERSITY OF CHICAGO

[illegible]

Nosek. He was asked whether he saw anybody chasing boys away from the truck and he said he did not.

Edward Nosek was about 9 years old at the time of the occurrence in question. He also testified that the plaintiff was several feet from the truck when it backed up and knocked him over on his stomach, - "he fell down and spread his hands and the hind wheel ran over the left hand. The truck ran ten or five feet back." He testified further that he did not hear the driver of the truck say anything nor did he come around behind the truck before he started to back, - "He just went on the truck and started. He did not blow a horn. * * * I did not see any boys on the truck and I did not see any boys chased away from the truck." On cross-examination this witness was shown a written statement purporting to have been signed by him shortly after the accident happened. The witness identified his signature at the bottom of the statement. He was asked whether he told the representative of the defendant, at the time this statement was taken, that he saw the driver of the truck come out of the fire house and that the driver told the boys to get away from there, and also whether he told the representative at that time, that he saw the plaintiff on the curbstone with one hand leaning against the truck; and he testified that he did not remember. On redirect examination this witness testified that he never read over the statement prior to the time he was testifying. He further testified that he did not see the driver chase any boys away from the truck nor did he hear him say anything to the boys.

house. He was afraid, however, he was not really observing boys
away from the truck and he said he did not.

Edward Jones was about 5 years old at the time

of the occurrence in question. He also testified that the
plaintiff was several feet from the truck when it started up

and knocked him over on his stomach. - The fall down was

against his back and the hand which ran over the left hand.
The truck ran for five feet back. He testified further

that he did not hear the driver of the truck say anything

and that he once crossed behind the truck before he started

to back. - The last part on the truck and started. He did

not know a word. I did not see any boys on the

truck and I did not see any boys around away from the truck.

On cross-examination this witness was shown a written statement

and suggested to have been signed by him shortly after

the accident happened. The witness identified the statement

as the portion of the statement. He was asked whether he told

the representative of the defendant, at the time this state-

ment was taken, that he saw the driver of the truck come out

of the five houses and that the driver told the boys to get

away from there, and he told the representative

at that time, that he saw the plaintiff on the sidewalk with

one hand leaning against the truck; and he testified that he

did not remember. On further examination this witness testi-

fied that he never read over the statement prior to the time

he was testifying. He further testified that he did not see

the driver chase any boys away from the truck nor did he hear

him say anything to the boys.

3 Another boy in the group who were present at the time the plaintiff was injured, was Charles Reid. He was about ten years old. He testified that after the fireman Healy finished washing his car, he saw the defendant's driver go to his truck, north of the alley, and back up; that he did not notice whether the driver said anything to anybody before he started to back; that he did not hear him say anything before he got on his truck; that the boys who were present at that time were back near the rear end of the truck; that the plaintiff was standing back of the truck and was knocked down. This witness was also shown a statement which he had signed shortly after the occurrence, and he was asked whether or not the things set down in that statement about this accident were true, and he said some were not. He was asked which part was not true and he answered, "where he yelled to the boys." He was asked whether he told the defendant's representative at the time this statement was taken that the driver yelled at the boys; and he said he had. He was then asked, "Then he put it down on this paper?" and he answered, "Yes, sir; he was contradicting me and I could not tell it straight." It appears that this boy's parents and an older brother were present at the time this statement was taken. He testified that neither of them read the statement over at the time it was taken, but that he had read it. He further testified that the boys did not have hold of the truck that he knew of; that he did not see the plaintiff fall, as he was standing over in front of the engine house; that the plaintiff was standing back of the truck when it backed up and he was not leaning against it. On redirect examination he testified

Another boy in the town who was present at the time the plaintiff was injured, was Charles Smith. He was about ten years old. He testified that after the fireman nearly finished washing his car, he saw the defendant's driver go to his truck, south of the alley, and come up; that he did not notice whether the driver said anything to anybody before he started to back; that he did not hear him say anything before he got in his truck; that the boys who were present at that time were back of the rear end of the truck; that the plaintiff was standing back of the truck and was looking down. This witness was also shown a photograph which he said appeared to be a picture of the defendant, and he was asked whether or not the picture was taken in that statement about this accident, and he said that he did not know. He was asked which way he was looking at the time, and he answered, "where he yelled to the boys." He was asked whether he told the defendant's representative at the time this statement was taken that the driver yelled to the boys, and he said he did. He was then asked, "Then he said to them on this point, and he answered, 'Yes, sir'." He was contradicting me, and I could not tell it otherwise." It appears that this boy's parents and an older brother were present at the time this statement was taken. He testified that neither of them read the statement over at the time it was taken, but that he had read it. He further testified that the boys did not have hold of the truck when he knew all that he did not see the plaintiff fall, as he was standing over in front of the engine house; that the plaintiff was standing back of the truck when it backed up and he was not looking around it. On redirect examination he testified

that he did not hear the defendant's driver yell to the boys.

For the defendant, the driver of the truck, one Mensik, testified that when Healy was through washing his car he (the witness) walked back from the engine house to his truck and saw some boys behind it, - "A whole mob of them; * * * I chased them away and started my motor and as I started my motor I heard them there again, and I chased them away again, - chased them to pretty near 47th street again, and then I came back and got on and the first thing I heard them back on; I heard them romping on the back of the truck again. * * * and I got out and chased them, and after I got on * * * and saw no one around I started to back slowly, and I don't think I backed a foot when I heard a boy scream." He testified that when he chased the boys away he "hollered for them to get away from there or you are going to get hurt." On cross-examination this witness testified again that when he chased the boys away from the truck, "they ran towards 47th street and they scattered all over the lot across the street." At another point he testified that he "chased them clean to 47th street * * * This time I chased them all the way to 47th street about 125 feet. They all ran toward 47th street and some a little way east. I went to 47th street myself, chasing them all the way * * * and when I got on the last time I heard nobody." He testified that it was necessary for him to back the truck up a little before going forward so as to get around Healy's car which had been backed into the alley and was "sticking out of the alley, - say three or four feet."

that he did not have the opportunity to say anything to the boys.

On the following day, the day of the truck, and again, recalled that when nearly two weeks before the day of the truck, he had been in the truck house to see the truck and saw some boys coming in, - "A whole lot of boys," - "I thought they were and started up water and saw I started up water I heard them there again, and I started from my again, - I heard them go away from the truck again, and then I went back and got on the first thing I heard them back on; I heard them keeping on the back of the truck again, - "I and I put out and closed them, and after I got on, - "and now no one around I started to hear again, and I don't think I needed a lot of boys heard a boy again, he recalled that when he closed the boys away he recalled that when he got away from them on yesterday being to get out, - "On yesterday this afternoon recalled again that when he closed the boys away from the truck, - "they ran towards the truck and they started all over the lot across the street, - "at another time he recalled that he had seen them close to the street, - "I told them I wanted them all the way to the street and the day, - "they all went towards the street and were a little way away, I went to the street myself, calling them all the way, - "and when I got on the last time I heard nobody, he recalled that it was necessary for him to look the truck up a little before going towards it as he saw around Kelly's car which had been parked in the alley and was waiting out of the alley, - "my three or four feet."

The testimony given by the latter witness as to the reason for backing his truck does not find support in the testimony of any of the other witnesses. According to the testimony of Nealy, his car was out near the middle of the street and just being driven away from the fire plug at the time the plaintiff was hurt. The driver was further materially contradicted by another witness, for the defendant, namely, Thomas Boherty, a boy about twelve years old, who testified that he was standing at the corner of 47th street at the time the plaintiff was injured. He testified he saw the driver get off his truck and go into the engine house but that he did not see him after that until he heard the plaintiff cry out, at the time he was injured. This witness testified that he did not hear the driver say anything to the boys. Certainly this witness would have given very different testimony if the driver had done all the "hollering" and chasing he described in his testimony.

One Sullivan was called as a witness by the defendant and testified that he was standing over in front of the fire house at the time the plaintiff was hurt; that he saw a group of boys playing around the truck; that he saw the truck driver go toward his truck and then he noticed the boys running the other way "and then I saw one boy near the curbstone, near the back wheel, and I ran and picked him up." He further testified that as the driver went toward his truck he heard him say something but he did not hear what it was; that he thought he said it to the boys and they ran the other way; that the driver was on the street when he said something

The testimony given by the latter witness as to the reason for leaving his truck does not find support in the testimony of any of the other witnesses. According to the testimony of nearly all the witnesses, the truck was at the time the accident occurred, and was being driven away from the scene of the accident. The driver of the truck was further materially contradicted by another witness, the defendant, namely, Thomas, who says that the truck was at the time the accident occurred, and was being driven away from the scene of the accident. As the driver of the truck at the time the accident occurred, he testified that he saw the driver of the truck and that he saw the engine of the truck, but that he did not see him after that until he heard the plaintiff say out, at the time he was injured. This witness testified that he did not hear the driver say anything to the boys. Certainly this witness would have given very different testimony if the driver had done all the "battering" and chasing he described in his testimony.

The witness was called by a witness by the defense and testified that he was standing over in front of the truck at the time the plaintiff was hurt; that he saw a group of boys playing around the truck; that he saw the truck driver go toward his truck and when he noticed the boys running the other way and then I saw the boy near the truck, near the back wheel, and I ran and picked him up. He further testified that as the driver went toward his truck he heard him say something out he did not hear what it was; that he thought he said it to the boys and boys and the other way; that the driver was on the street when he said something

to the boys "straight from the bumper of the truck;" that the plaintiff was behind the rear right wheel and west of the truck when he picked him up. On cross-examination this witness testified that the truck was standing about 20 feet north of the alley and that the driver was about even with the alley, walking from the hydrant toward the truck, "at the time he said this thing, whatever it was P * * and then he walked right up and then ran around the truck on the east side of it, made a circle around it and came back on the west side."

The defendant offered in evidence the two written statements, one signed by the witness Nosek and the other by the witness Reid. The statement signed by Nosek was to the effect that he did not see the driver of the truck chase the boys off the truck; that he saw the driver of the truck come out of the fire house and he told the boys to go away from there; that he saw the plaintiff on the curb with one hand leaning against the truck; that the truck backed up about a foot and the plaintiff fell down "and the wheel ran over his right hand." The statement signed by Reid was to the effect that the driver walked over toward his truck and yelled to the boys that were standing there, to look out as he was going to back; that he noticed the plaintiff leaning against the side of the truck; that the truck backed up and the plaintiff fell to the ground near the back wheels; that the back of the truck did not strike the plaintiff but when the truck moved the plaintiff was leaning against the side and that "is how he fell."

to the boys' feet from the corner of the truck; that the plaintiff was behind the truck and was not at the truck when he picked him up. The witness testified that the truck was standing about 20 feet north of the alley and that the driver was about 10 feet from the alley, walking from the plaintiff toward the truck, and the time he said this thing, whatever it was, and then he called right up and then saw the truck at the rear side of it, made a circle around it and came back on the west side.

The defendant testified in evidence the two witness statements, one signed by the witness Jones and the other by the witness Reid. The statement signed by Jones was to the effect that he did not see the driver of the truck chase the boys off the truck; that he was the driver of the truck some one of the time he was on the way to go away from there; that he saw the plaintiff on the way with one ball leaning against the truck; that the truck moved up about a foot and the plaintiff told him "all the while he was on his right hand." The statement signed by Reid was to the effect that the driver walked over toward the truck and walked to the boys that were standing there, he took out as he was going to back; that he walked the plaintiff leaning against the side of the truck; that the truck backed up and the plaintiff left to the ground near the back wheel; that the back of the truck did not strike the plaintiff but when the truck moved the plaintiff was leaning against the side and that "he was on his left."

The only other witness in the case was the doctor who took care of the plaintiff's hand. From his testimony it appears that there was a cut across the back of the left hand, extending down through the web between the index finger and the thumb, and the cut extended across the surface of the palm of the hand or very nearly across. The bone opposite the index finger was broken and crushed at its upper end. The cut across the hand was through the skin and fascia and several of the tendons running through the fascia were severed.. These tendons control the fingers of the hand. Infection developed in the cut located in the palm of the hand but apparently did not prove serious. As the wound healed the thumb was drawn in toward the index finger. The plaintiff was taken back to the hospital where the doctor performed what he called a plastic operation so as to increase the size of the web between the thumb and the index finger and give greater freedom of movement. The doctor testified that "there was not much result from the second operation;" that the thumb was contracted and drawn in against the index finger; that ankylosis was present in the first metacarpel bone; that the thumb had very little motion in it; that there was some motion in the fingers but that the plaintiff possessed no strength in the grip; that he could close the fingers but could not "make a tight fist;" that when the plaintiff closed his hand as tight as he could, there was about an inch between the fingers and the palm of his hand; that his inability to close his hand was caused by the presence of scar tissue in the palmar fascia, and

The only other witness in the case was the
doctor who took care of the plaintiff's hand. From
his testimony it appears that there was a cut across the
palm of the left hand, extending down towards the web
between the index finger and the thumb, and the cut
extended across the middle of the palm of the hand in
very nearly a cross. The wound opposite the index finger
was broken and extended to the wrist and the cut across
the hand was through the skin and knuckle and severed of
the tendon running through the fascia were severed.
These tendons control the fingers of the hand. Infection
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formed what he called a plastic operation so as to improve
the size of the web between the thumb and the index finger
and give greater freedom of movement. The doctor testified
that "there was not much result from the second operation"
that the thumb was contracted and drawn in toward the
index finger; that approximately one percent of the thumb
was amputated; that the thumb had very little motion in
it; that there was some motion in the fingers but that the
plaintiff possessed no strength in the grip; that he could
close his fingers but could not make a tight fist; that
when the plaintiff closed his hand as tight as he could,
there was about an inch between the fingers and the palm
of the hand; that his inability to close his hand was caused
by the presence of scar tissue in the palmar fascia, and

that, in his opinion, this condition of the hand was permanent. The testimony shows that the plaintiff was left handed.

In support of its appeal the defendant contends that the physical injuries to the plaintiff's left hand show that the accident could not have happened in the manner sought to be proved by the evidence submitted in his behalf, and therefore, that the plaintiff had failed to make out his case as charged in the declaration. In our opinion this contention is not tenable. It may not reasonably be said that the plaintiff could not have been struck and knocked over and could not have fallen in the manner he and his witnesses described and receive the injuries to his left hand, as those injuries were described by the doctor. The argument advanced in behalf of the defendant is that if the plaintiff had been knocked over in the manner described, and the truck had backed up so that the rear right wheel ran over his left hand, it would have been inevitable that the little finger side of his hand would have been injured and crushed, but as the evidence showed that that side of his hand was not hurt at all but that the injury extended across both the upper and lower sides of the hand, from the web between the thumb and index finger to a point about opposite the fourth finger, it followed, as a physical fact, that the injury could not have been received as the plaintiff and his witnesses testified it was. There is no testimony in the record showing the condition of the pavement of the street at the point where the plaintiff received his injury. It

that, in his opinion, the condition of the hand was
normal. The testimony shows that the plaintiff
was left-handed.

In support of the general fact that the plaintiff was
left-handed, the plaintiff introduced the following evidence:
That the plaintiff's left hand was injured in the
accident and that the accident could not have happened in the
manner set out to be proved by the evidence submitted
in the brief, and therefore, that the plaintiff had
failed to take out his hand as shown in the description.
In our opinion this contention is not tenable. It may
not necessarily be said that the plaintiff could not have
been struck and thrown over and could not have fallen
in the manner he and his witnesses described and received
the injuries to his left hand, as these injuries were
described by the doctor. The plaintiff's statement in de-
tail of the accident is that if the plaintiff had been
struck over in the manner described, and the truck had
backed up so that the rear right wheel ran over his left
hand, it would have been inevitable that the left finger
side of his hand would have been injured and crushed, but
as the evidence shows that that side of his hand was not
hurt at all but that the injury extended across both the
upper and lower sides of the hand, from the web between
the thumb and index finger to a point about opposite the
fourth finger, it followed, as a physical fact, that their
jury could not have been received as the plaintiff and his
witnesses testified it was. There is no testimony in the
record showing the position of the plaintiff at the time
at the point where the plaintiff received his injury. It

may well be that the little finger side of the plaintiff's hand was protected, either by a depression in the pavement or by the presence of some object such as a stick or stone lying on the pavement. There are several situations that may have been present so as to result in the injuries which the plaintiff received and in the manner described by him. There might be something to the point thus urged by the defendant, if there were testimony showing a perfectly smooth surface in the pavement at the point where the plaintiff was lying at the time the injuries were received. There is very little, if any, substantive testimony in the record, tending to contradict the description of the occurrence as testified to by the plaintiff and his witnesses. As pointed out by counsel for the plaintiff, the written statements signed by Mosek and Reid may not be given the effect of such testimony. At most, they may merely be given the effect of tending to show that the witnesses at one time made statements which were not in accord with the testimony given by them on the trial. The statements were proper for the jury to take into consideration, in weighing the testimony of the two witnesses involved. Much of the argument advanced in support of this point, made in behalf of the defendant goes to the question of the value of the testimony given by the companions of the plaintiff, in support of his case. That was a matter for the jury to weigh and determine. In our opinion the record is not such as to warrant this court in saying that the verdict reached by the jury is against the manifest weight of the evidence.

may well be that the little finger of the right hand
was protected, either by a bandage in the pocket
or by the presence of some object such as a stick or
stone lying on the ground. There are several circumstances
that may have been present so as to result in the injuries
which the plaintiff received and in the manner described
by him. There might be something in the way of the hand
by the defendant, if there were something such as a per-
fectly smooth surface in the pocket of the pants where
the plaintiff was lying at the time the injuries were
received. There is very little, if any, evidence
tending in the record, tending to contradict the con-
clusion of the defendant as established by the plain-
tiff and his witnesses. As pointed out by counsel for the
plaintiff, the witness statements given by both the plain-
tiff and his witnesses, at least,
they may easily be given the effect of tending to show
that the witnesses at one time had statements which were
not in accord with the testimony given by them at the trial.
The witnesses were asked for the jury to take into consid-
eration, in weighing the testimony of the two witnesses in-
volved, each of the arguments advanced in support of this
point, each in behalf of the defendant and each to the detriment
of the value of the testimony given by the complainant of the
plaintiff, in support of his case. There was a contest for the
jury to weigh and determine. In our opinion the record is
not such as to warrant this court in saying that the ver-
dict rendered by the jury is against the plaintiff without
of the evidence.

The defendant further contends that the trial court erred in refusing an instruction requested by it, in which it was sought to tell the jury that if they believed from the evidence that at the time the plaintiff was injured he "was standing on or near the west curb of Elizabeth street and near the west side of the defendant's automobile, at a point somewhere between the front and rear wheels of said automobile, and that he was then and there leaning against or had hold of the west side of said automobile, and that while plaintiff was in that position the automobile was backed up, thereby throwing the plaintiff so that his left hand was caught in or run over by the rear right wheel of said automobile," then they should find the defendant not guilty. For the reasons we have already had occasion to refer to, we are of the opinion that this instruction was properly refused. So far as the character of the injuries to the plaintiff's left hand are concerned, we fail to see that they supported the theory outlined in this instruction any more than they did the theory involved in the plaintiff's declaration and in the testimony submitted in support of it. Furthermore, as already pointed out, there was no substantive testimony in the record, showing or tending to show that the injuries were received by the plaintiff in the manner described in this instruction. The written statements of the two boys, introduced in evidence, may not properly be given such effect. Some elements included in the instruction are not supported by any evidence at all.

Another instruction submitted by the defendant

The defendant further stated that the trial
court acted in refusing an instruction requested by it,
in which it was asked to find the jury that it was
believed from the evidence that at the time the witness
was injured he was standing on or near the west end
of Lincoln street and near the west side of the railroad
and that the defendant was at a point somewhere between the street and
the railroad at said intersection, and that he was then and
there leaning against or had hold of the west side of
said intersection, and that while plaintiff was in that
position the defendant was backed up, thereby blocking the
plaintiff so that his left hand was caught in or ran over
by the rear wheel of said automobile. That they
should find the defendant not guilty. For the reasons we
have already had occasion to state, we are of the
opinion that the instruction was properly refused. We
are of the opinion that the evidence is sufficient to find the
plaintiff liable for the injuries to the plaintiff's
left hand and arm, and we feel to see that the jury
the theory outlined in this instruction any more than they
did the theory involved in the plaintiff's declaration and
in the testimony submitted in support of it. Furthermore,
as already pointed out, there was no representative testimony
in the record, showing or tending to show that the injuries
were received by the plaintiff in the manner described in
this instruction. The witness statements of the two boys
introduced in evidence, may not properly be given such
effect. Some elements included in the instruction are
not supported by any evidence at all.

sought to advise the jury that the law does not require that a lookout be stationed on the back of a truck when being backed up, but that all that is required of the driver, is ordinary care in going forward or in backing up. It is contended that the trial court erred in refusing this instruction also. It is never error to refuse an instruction which merely contains an abstract statement of the law. Moreover, there was no such issue or contention in the case. Instructions which the trial court did give, fully covered the question of the extent of the care required of the driver of the truck.

It is urged further by the defendant that the verdict is grossly excessive in view of the injuries received by the plaintiff. We have heretofore referred to the extent of those injuries, as testified to by the doctor who took care of the plaintiff's hand. The plaintiff testified that he could not pull with his hand and also that he could not hold a knife or a fork in it. He testified that the injured hand was weaker than the other; that it was affected by changes of the weather, and that it felt colder than the other hand, at times. It would seem from the testimony of the doctor that the condition of the plaintiff's hand, as described by him, is permanent. He testified that the condition of this hand was not such as would be likely to change materially as the plaintiff grew older, although the injuries were received when he was comparatively young. That the injuries will result in a very material impairment in the use of the hand, is certain. Taking all the elements

ought to advise the jury that the law does not require
that a lookout be stationed on the back of a truck when
being backed up, but that all that is required of the
driver, is ordinary care in being turned or in backing
up. It is contended that the fact that there is no
looking this investigation also. It is never exact to re-
turn an investigation which really contains no substance
statement of the law. Moreover, there was much more
or contention in the case. Investigations with the trial
court did give, fully covered the question of the extent
of the care required of the driver of the truck.

It is urged further by the defense that the
evidence is grossly erroneous in view of the injuries
received by the plaintiff. He has numerous references
to the extent of these injuries, as testified to by the
doctor who took care of the plaintiff's wound, the other
with settled that he could not tell with his hand and
eye that he would not hold a knife or a fork in it.
He testified that the injury had not been taken from the
court; that it was affected by changes of the weather,
and that it felt better than the other hand, as stated.
It would seem from the testimony of the doctor that the
condition of the plaintiff's hand, as described by him,
is permanent. He testified that the condition of this
hand was not such as would be likely to change materially
as the plaintiff grew older, although the injuries were
received when he was comparatively young. That the in-
juries will result in a very material impairment in the
use of the hand, is certain. Taking all the elements

involved into consideration, we are unable to say that the damages fixed by the jury are such as would warrant this court in disturbing the verdict.

For the reasons stated the judgment of the Superior Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

the lives into consideration, we are liable to say that
the charges filed by the jury are such as would
this court in a moment be voided.

For the reasons stated the judgment of the

majority must be affirmed.

UNANIMOUS VERDICT

THEY ARE GUILTY, BY THE COURT.

338 - 30191

RAFAEL IVANANSKAS,

Appellee,

v.

FRANK PAIEDA,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 660

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendant seeks to reverse a judgment for \$150.00 recovered against him in the Municipal Court of Chicago, by the plaintiff.

By his statement of claim the plaintiff alleged that his claim was for \$150, being a balance due for a "Hudson automobile gear No. 90016, engine No. 84804, sold and delivered to the defendant at his special instance and request on November 18, 1923. That said defendant promised to pay the same in installments of fifty and no/100 (\$50) dollars each, payable one installment in each of the months of December, 1923, January, 1924, and February, 1924. Plaintiff further states that the defendant drew up in his own hand writing and signed a promissory note, dated November 18, 1924, for one hundred fifty (\$150) dollars, payable to the plaintiff in installments as above described. That though often requested, the defendant had refused to pay the same, to the damage of the plaintiff in the sum of one hundred fifty and no/100 dollars (\$150). Wherefore, he

328 - 3281

MAINTENANCE

MAINTENANCE

V.

MAINTENANCE

MAINTENANCE

2401A.660

Opinion filed Jan. 30, 1936.

IN RE: MAINTENANCE OF THE MAINTENANCE OF THE

MAINTENANCE OF THE MAINTENANCE

By this order the MAINTENANCE OF THE MAINTENANCE

A judgment for \$100.00 recovered against him in the

MAINTENANCE OF THE MAINTENANCE, by the MAINTENANCE.

By the statement of him the MAINTENANCE of the

that his wife was for \$100, being a balance due for a

"MAINTENANCE OF THE MAINTENANCE" of \$100, being a balance due for a

and delivered to the MAINTENANCE of his special MAINTENANCE and

received on November 18, 1935. That said MAINTENANCE promised

to pay the same in installments of fifty and no/100 (\$50.00)

dollars each, payable and installment in each of the months

of November, 1935, January, 1936, and February, 1936.

MAINTENANCE further states that the MAINTENANCE drew up in his

own hand writing and signed a promissory note, dated Nov-

-ember 18, 1935, for one hundred fifty (\$150) dollars, and

gave to the MAINTENANCE in installments as above described.

That MAINTENANCE often requested, the MAINTENANCE had refused to pay

the same, for the MAINTENANCE of the MAINTENANCE in the sum of one

hundred fifty and no/100 dollars (\$150). Therefore, do

brings his suit."

The sole point raised by the defendant in support of his appeal is that the statement of claim was insufficient to state a cause of action and that the trial court erred in denying the defendant's motion to strike the statement of claim.

The point contended for is without merit. In our opinion the statement would be good as a common law declaration, according to the authority cited by defendant himself. 2 Daniels on Negotiable Instruments, 5th Ed. Sec. 1199. The plaintiff alleges in his statement of claim facts from which it appears that he is the payee of the notes sued upon. Furthermore, this was an action of the fourth class in the Municipal Court of Chicago. In such an action no written pleadings are required and the case is whatever the evidence introduced, makes it. Edgerton v. C. R. I. & P. Ry. Co., 240 Ill. 311; Sexton & Co. v. English, Ganning & Mfg. Co., 211 Ill. App. 504; McClunn v. Gillespie, 227 Ill. App. 400. The record shows the court heard evidence, but the record does not contain it. We must assume it was sufficient to support the judgment. The statement of claim in the case at bar appraised the defendant fully as to what the claim of the plaintiff consisted of and the nature of his demand, which is sufficient to comply with the requirements of the statute. Cahill's Illinois Statutes, ch. 37, Par. 428.

For the reasons stated the judgment of the Municipal Court is affirmed.

AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

believe his word.

The sole point raised by the defendant in support of his appeal is that the statement of facts was immaterially-
about to show a course of action and that the trial court
erred in denying the defendant's motion to strike the
statement of facts.

The court responded that it was not bound. In

the opinion the statement would be given as a summary of
testimony, according to the testimony given by defendant
himself. It would be a summary of the testimony, and it is
1100 The plaintiff's motion in its statement of facts
those facts which it appears that in the opinion of the
court were true. Furthermore, this was in violation of the
law of the state in the matter of the trial. In such
an action as this, the plaintiff has the right to set out
in whatever the evidence introduced, under 12. Section 12

Section 12 of the Evidence Code, which is the same as the

law of the state. The court found that the court found that
the law of the state is the same as the law of the state. It was
not necessary to support the judgment. The court found that the
law of the state is the same as the law of the state. It was

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law of the state. It was not necessary to support the judgment. The
court found that the law of the state is the same as the law of the
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not necessary to support the judgment. The court found that the law of the state is the same as the law of the state. It was

not necessary to support the judgment. The court found that the law of the state is the same as the law of the state. It was

347 - 30200

JACOB BLOOMENTHAL, ET AL.

Appellees,

v.

F. W. WOOLWORTH CO.,
a Corporation,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 660

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

In their statement of claim the plaintiffs alleged that in April, 1914, one Hollender and wife leased certain premises to the defendant company, by a certain lease, copy of which was attached to the statement of claim. This lease was for a period of 10 years. The premises covered by it, included parts of two buildings, one in the front of the premises and the other in the rear. The plaintiff alleged that sometime in 1916 they acquired title to this property in fee simple and the lease in question was assigned to them in writing, and that the defendant attorned to them. They further alleged that as a part of the consideration of the letting of the premises to the defendant, the latter obligated itself to make certain repairs, sometime after May 1, 1917, and prior to the expiration of the lease, by which repairs the two buildings would be joined together. They further alleged that they often requested and demanded that the defendant make these repairs, such requests and demands being made after May 1, 1917, and prior to April 30, 1924, the date of the

STATE DEPARTMENT, WASH.

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U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

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240 I.A. 660

Opinion filed Jan. 30, 1938.

U. S. DEPARTMENT OF JUSTICE

Opinion of the Court.

In their statement of claim the plaintiffs

allege that in April, 1934, the defendant was

issued certain patents in the defendant's name,

a certain issue, copy of which was attached to the

copy of claim. This issue was for a period of 10 years.

The plaintiff averred by its amended petition of the building,

one in the issue of the plaintiff and the other in the

the plaintiff alleged that in 1935 some persons

with no title ownership in the plaintiff and the issue in

the issue assigned to them is existing, and that the

was assigned to them. They further alleged that as a

of the ownership of the plaintiff the plaintiff of the

defendant, the plaintiff alleged that it was certain

plaintiff, plaintiff alleged that in 1937 and before it

ownership of the issue, in which plaintiff the two

also could be found together. They further alleged that

they often requested and demanded that the defendant

those together, both together and separate being after

May 1, 1937, and before the April 30, 1938, the date of the

expiration of the lease, but that the defendant failed and neglected to perform its obligations under the lease with reference to the repairs and failed and neglected to join the two buildings together in accordance with the provisions of the lease. The plaintiffs also alleged that the fair and reasonable cost of the work required to make the changes and repairs contemplated was, in April 1924, the sum of \$5,000; that the defendant in June 1917, had acknowledged in writing its obligation to do this work but stated that it did not desire to incur the expense at that time; and that the work had never been done, wherefore, the plaintiffs brought this action to recover from the defendant the fair and reasonable cost of doing it.

The defendant company filed an affidavit of merits setting up as its only defense what amounted to a plea of res adjudicata. This contention was based on an action which the plaintiffs had brought against the defendant in December 1919, in which action the plaintiffs had also set up the failure of the defendant to make these changes and repairs which they contended the lease called for and in which action they sought to compel the defendant to pay the fair and reasonable cost of making the changes and repairs, which cost was then alleged to be \$2500.

The plaintiff later filed an amended statement of claim in the case at bar, which made substantially the same allegations as the original statement, but with greater particularity. It will not be necessary to refer to these allegations in this opinion. Subsequently, the defendant filed an amend-

operation of the issue, and that the defendant failed
 and neglected to perform his obligations under the issue
 with reference to the issue and failed to deliver to
 him the two buildings together in accordance with the
 terms of the issue. The plaintiff also alleged that
 the fair and reasonable cost of the work required to carry
 the changes and repairs contemplated was, in April 1922,
 the sum of \$5,000; that the defendant in June 1922, had
 acknowledged in writing the obligation to do this work and
 stated that it did not desire to incur the expense at that
 time; and that the work had never been done, wherefore, the
 plaintiff prays this action to recover from the defendant
 the fair and reasonable cost of doing it.

The defendant answered filed an affidavit of denial setting
 up as the only defense what amounted to a plea of non
est factum. This contention was based on an action which
 the plaintiff had brought against the defendant in January
 1922, in which action the plaintiff had also set up the
 failure of the defendant to make these changes and repairs
 when they constituted the issue called for and in which action
 they sought to compel the defendant to pay the fair and
 reasonable cost of making the changes and repairs, which
 cost was then alleged to be \$5,000.

The plaintiff later filed an amended statement of
 claim in the case at bar, which made substantially the same al-
 legations as the original statement, but with greater particular-
 ity. It will not be necessary to refer to these allegations
 in this opinion. Subsequently, the defendant filed an answer

ment to its affidavit of merits, by adding an additional defense, namely, a denial that the fair and reasonable cost and value of the work required for the making of the repairs and improvements, in the month of April, 1924, was the sum of \$5,000.

The issues joined on these pleadings were submitted to the court and the court found the issues in favor of the plaintiffs and assessed their damages at the sum of \$5,000, and judgment was entered against the defendant for that amount. To reverse that judgment the defendant has perfected this appeal.

One of the contentions advanced by the defendant in support of its appeal is that the lease should be most strongly construed against the plaintiffs, they being assignees of the lessor, and that under such a construction of the various clauses in the lease, the defendant was not obligated to make the repairs, as claimed by the plaintiffs. With reference to that contention it is sufficient to say that the defendant is not in a position to make it, in view of the pleadings. The defendant must be confined to such defenses as it chose to set up in its affidavit of merits. No such defense is there mentioned. In their statement of claim the plaintiffs alleged that under the lease the defendant was obligated to make the repairs and alterations in question sometime during the term of the lease, but not until after May 1, 1917. That contention and allegation advanced by the plaintiffs in their statement of claim was not denied by the defendant in its affidavit of merits, either as originally filed or as later amended. All material matters

—also over multiple, rather than single, events.

On the other hand, the results of the present study suggest that the effect of the intervention may be more pronounced in the short term than in the long term.

[illegible]

alleged by the complainants in their statement of claim and not denied or traversed by the defendant in its affidavit of merits are to be taken as admitted. That being the situation, the defendant cannot be heard to raise that point now.

Another contention advanced by the defendant in support of its appeal is that the plaintiffs, although purporting to sue as assignees, did not comply with Section 18 of the Practice Act, and make the affidavit there required. As in the case of the point last referred to, so here, this defense was not interposed by the defendant's pleading in the trial court. Moreover, we are of the opinion that Section 18 has no application to the assignment of a lease. That section has to do with any chose in action, not negotiable. Where parties purchase property which is under lease and taken an assignment of the lease and the tenant attorns to them, it seems quite clear that the rights they have acquired under the assignment may not be properly described as chose in action. Harr v. Florentine Alabaster Co., 174 Ill. App. 256; Cahills Ill. Sts. Ch. 80 sec.14; 5 C.J.847, 851; 24 Cyc. 979.

The main contention advanced by the defendant in support of its appeal is that the prior action brought by the plaintiffs against the defendant, referred to by the latter in its affidavit of merits, is res adjudicata, and therefore, a complete bar to the present action. In our opinion that contention is also untenable. The plaintiffs concede that issues which the parties have formerly litigated,

aligned by the complainants in their statement of claims
and not being so situated by the defendant in its
affirmative of matter was to be taken as admitted. This
being the situation, the defendant cannot be heard to
insist that it was not.

Another material variance of the defendant in

support of its claim is that the defendant, although
purporting to own an easement, did not actually own the portion
in of the tract in fact, and was the only party there to
claim. As in the case of the matter just referred to, no
fact, this balance was not introduced by the defendant.

pleading in the first place. However, we are of the
opinion that section 18 has no application to the matter
of a lease. The section has to do with any other in action,
not negotiable. Where parties purchase property which is

under leasehold there is assignment of the lease and the
tenant cannot be heard to deny that the rights
they have acquired under the assignment may not be properly
assigned as shown in action. See v. Hibernia Insurance Co.
170 Ill. App. 222; 211 Ill. 222. 200 Ill. 222. 211 Ill. 222.
211 Ill. 222.

The sole question raised by the defendant in
support of its claim is that the prior action brought by
the plaintiff against the defendant, returned by the
court in the affirmative of matter, is not admissible, and
therefore, a complete bar to the present action. In our
opinion this contention is also untenable. The plaintiff
cannot that action with the plaintiff have been previously litigated.

as appears from the record in the case, and also all issues which either party in the exercise of reasonable diligence might have brought forward and had adjudicated in that cause, are barred in any subsequent action by the doctrine of res adjudicata. But it is pointed out that under the pleadings in the case at bar, it is admitted that the terms of the lease were such as to obligate the defendant to make the repairs and alterations in question at some time following May 1, 1917, and before April 30, 1924, from which it is contended that when the plaintiffs brought an action against the defendant in December 1919, seeking to recover damages by reason of the alleged failure of the defendant to make these repairs and alterations as required by the lease, they possessed no right of action in the premises, and that being the case the rendition of a judgment of nil capiat in the prior action does not bar the present action. That is a correct statement of the law. Bacon v. Schepflin, 185 Ill. 122, 129 - 130; Natl. Bond & Investment Co. v. Lakes, 230 Ill. App. 608, 613. The defendant seeks to meet this contention advanced by the plaintiffs by pointing out that, in making the contention, the plaintiffs assume that the trial court in the first suit brought by them, dismissed the suit because it was prematurely brought, whereas, the contrary is apparent, in view of the fact that the record discloses that in that prior action the court allowed the plaintiffs to amend their statement of claim several times, and that such action on the part of the trial court is inconsistent with any such view. One essential requisite to a successful plea of res adjudicata is, that the two causes of action involved were the same and

as appears from the record in this case, and also all parties
which appear party in the execution of necessary business
might have brought forward and not neglected to do so
means, are taken in any subsequent action by the decision
of the court. And it is pointed out that under the
provisions in the case at bar, it is admitted that the Court
of the lower court was not to be bound by the decision of the
State and circuit courts in questions of law the following
May 1, 1917, and before April 30, 1920, from which it is
understood that when the district court in action against
the defendant in January 1918, decided in favor of the
by reason of the alleged failure of the defendant to make
their return and affidavit as required by the laws, they
decided in favor of action in the district, and that order
the same the result of a judgment of the court in the
order which was not the proper action. That is a
correct statement of the law. Ward v. Ward, 100 Ill.
100, 101 - 102; Ward v. Ward, 100 Ill. 100, 101, 102;
100, 100, 101. The statement made in this case is
reversed by the authority by holding that the order was
invalid, the district court that the trial court in the
first case brought by them, claimed the only reason is
was properly brought, because, the contrary is incorrect;
in view of the fact that the court decided that in this
case action was well taken the district to award their
rights of claim against Ward, and that such action is the
first of the trial court is inconsistent with any other view.
The statement made in a subsequent part of the opinion
is, that the two points of action involved here are not

that the issues sought to be raised in the second action were properly before the court in the prior action, and passed upon. That this situation is not presented in the case at bar is clear from the fact that it is apparent on the face of the record that at the time the plaintiffs brought their prior action they, in fact, had no cause of action at all. In that situation it is immaterial what reason may have actuated the court in the prior action, in dismissing the suit and entering a judgment of nil capiat.

For the reasons stated, the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

that the former ought to be held in the same ratio
with respect to the latter as the latter is to the
former. This ratio is not preserved in the
case at hand. For the fact that it is necessary
to the fact of the former that the latter is necessary
and the latter is necessary, is not, and is not
of course at all. In fact, it is necessary
that the former may have occurred in the latter
case, in the case of the latter, is not a necessary
of all cases.

For the reasons stated, the judgment of the

Supreme Court is affirmed.

REVEREND JUSTICE,

THE COURT OF APPEALS, NEW YORK.

356 - 30309

JAMES C. DAVIS, Director General
of Railroads,

Appellee,

v.

THE TANNE SILICA COMPANY, a corp.,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 661

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the
opinion of the court.

The plaintiff, Director General of Railroads,
brought this action against the defendant company to recover
a claim for freight on a carload of Silica transported from
Elco, Illinois to East St. Louis, Illinois, and from there to
Bellefontaine, Ohio, and from the latter point to Chicago,
amounting to \$254.83. The defendant took the position that
it was liable only for the freight from Elco to East St.
Louis and from the latter point to Chicago direct, amounting
to \$73.78. This dispute was submitted to the trial court
without a jury on a stipulation of facts, it being under-
stood that the court was to enter judgment in favor of the
plaintiff for either one or the other of the above amounts,
depending upon whether the court agreed with the contention
made by the plaintiff or with that made by the defend-
ant. The court held in favor of the plaintiff and entered
judgment against the defendant for \$254.83. To reverse that
judgment the defendant has perfected this appeal.

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YOUNG, JAMES D. JR.

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Opinion filed 19th. 30. 1936.

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Approved by General S. G. Hill, 11/14/1947

The first action against the defendant company to recover
 a claim for freight on a carload of Illinois transmitters from
 Chicago, Illinois to East St. Louis, Illinois, was made by the
 defendant company, and from the latter point to Chicago,
 amounting to \$254.00. The defendant took the position that
 it was liable only for the freight from Chicago to East St.
 Louis and from the latter point to Chicago direct, amounting
 to \$25.00. This liability was admitted by the trial court
 without a jury on a stipulation of facts, it being under-
 stood that the court was to enter judgment in favor of the
 plaintiff for either one or the other of the above amounts,
 depending upon whether the court found that the defendant
 was by the stipulation of facts that made by the defend-
 ant. The court held in favor of the plaintiff and entered
 judgment against the defendant for \$254.00, to recover that

The facts stipulated were to the effect that on January 7, 1920, the defendant Silica Company delivered the car in question to the Mobile & Ohio Railroad Company at Elco, Illinois, consigned to Charles R. Sargent Company at Cleveland, Ohio, the railroad company delivering to the Silica Company an appropriate bill of lading. The car was designated as Car NF-45163. It reached East St. Louis at 4 A.M. January 9, and that evening at 9:30 o'clock was delivered by the Mobile & Ohio Railroad to what is referred to as the V & C. Belt, for a switching movement to the Big Four Railroad. After being delivered to the Big Four, the car was started on its way over the latter road to Indianapolis, Indiana.

On the following afternoon, January 10, at 2:00 o'clock the Western Union telegraph operator at East St. Louis received a telegram from Tamm, Illinois, addressed to the agent of the Mobile & Ohio Railroad at East St. Louis, reading: "Hold Northern Pacific forty-five one sixty two for instructions. Tamm Silica Co." This telegram was relayed by the Western Union to the Mobile & Ohio Company operator at 3:46 P.M. on the same afternoon, January 10, and it was delivered to the chief clerk of the inbound carload freight department of the railroad company at 4:40 P.M., January 10, which was Saturday. On Monday morning, January 12, in the morning mail, the Mobile & Ohio Railroad Company received a letter from the defendant enclosing the bill of lading covering this shipment and requesting it to "reconsign this car to the following address, 'Tamm Silica Co., Toolers Warehouse & Erie Delivery - Chicago, Illinois. * * * In the event this car

The first shipment went to the office on January 7, 1900, the defendant being personally delivered the car in question to the office & this delivery was at Elgin, Illinois, consigned to George W. Morgan & Sons as growing, etc., the railroad company delivering to the Elgin branch on approximately Jan. 10, 1900. The car was designated as car 10-2111. It remained at Elgin at 4 P.M. January 8, and next morning at 9:30 a.m. was delivered by the office to the office & this delivery was made to the Y & C. Co. for a shipping contract to the New York Harbor. After being delivered to the New York, the car was shipped on the 10th day of January to Baltimore, Md., where it arrived.

On the following afternoon, January 10, at 4:00 p.m. the Western Union Telegraph Company at Elgin, Illinois, received a telegram from Elgin, Illinois, addressed to the agent of the office & this telegram read as follows: "This Western Union Telegraph Company has a telegram from Elgin, Illinois, dated Jan. 10, 1900, which reads as follows: 'This telegram was received by the Western Union at the office & this company's attention at 4:00 P.M. on the 10th of January, 1900, and it was delivered to the chief of the Elgin branch at Elgin, Illinois, at 4:00 P.M., January 10, 1900, which was identical. On being received, January 10, in the morning, the office & this railroad company received a letter from the defendant enclosing the bill of lading covering this shipment and requesting it to be forwarded to the following address: 'George W. Morgan & Sons, Elgin, Illinois.' It was found that this was

has left your lines, please be kind enough to handle it with proper officials so that it will go into Chicago as requested above." At 11:45 that morning, after receiving this letter, the agent of the Mobile & Ohio Railroad sent a telegram to the agent of the Big Four Railroad at East St. Louis, requesting him to intercept the car in question and divert it, giving the directions which had been received in the letter from the defendant. At the same time, this agent advised the defendant by wire that the car had been delivered to the Big Four on January 9, and that he had "Wired connections to divert." When this telegram from the agent of the Mobile & Ohio Railroad reached the agent of the Big Four, the car had left East St. Louis for Indianapolis. The agent of the Big Four wired the agent at Indianapolis to divert the car as per the instructions which were forwarded. This telegram was received by the agent of the Big Four at Indianapolis about 12 hours after the car had arrived there and been sent on its way toward Cleveland. As soon as the agent at Indianapolis received the telegram referred to, he, in turn, wired the agent at Bellefontaine, Ohio, to divert the car to Chicago. This telegram was sent at 5:00 P.M. on January 13. The car was forwarded from Bellefontaine at 3:00 o'clock on the following morning, January 14, and was not diverted until it arrived at the railroad yards at Cleveland on January 15. It is admitted by the defendant that the instructions from the railroad agent at Indianapolis were placed in time to accomplish the diversion at Bellefontaine, consequently the plaintiff makes no claim

has left your letter, which he had brought to me. I
 with proper officials so that it will be for the
 as suggested above." At 11:00 AM, I was
 receiving this letter, the name of the office & the
 followed with a reference to the name of the office
 followed at 11:00 AM, I was, requesting him to
 the one in question and I was 15, giving the
 which had been received in the letter from the
 at the same time, this must be the document
 with him and has been delivered to the
 on January 12, and that he had
 directly. When this letter from the
 I this followed with the name of the
 our and left him at 11:00 AM for
 at the time when the name of the
 and to put the letter in the
 reference was received by the
 Indianapolis which is now at the
 and was sent on the way
 agent at Indianapolis received the
 in fact, with the name of the
 the way to Indianapolis. This
 on January 12. The way was
 at 11:00 AM on the following
 was not delivered until it
 at 11:00 AM on January 12. It is
 not that the letter from the
 police was sent to the
 Indianapolis, consequently the

for the freight from that point to Cleveland and then to Chicago, but limits its claim to the freight from Elco, Illinois, to Bellefontaine and from there to Chicago.

As stated by counsel for the defendant in the brief filed in this court, the chief contention in this case has to do with the construction to be given the telegram sent by the defendant on January 10, wherein it requested the Mobile & Ohio Railroad Company to hold the car for further instructions. It is the defendant's contention that the railroad was negligent in failing to comply with the request in that telegram and to accomplish the diversion of the car at East St. Louis. Counsel say in their brief filed in this court that "when the agent of the Mobile & Ohio Railroad waited for forty-three hours after the telegram was delivered to him requesting him to hold the car for further instructions, that, beyond any question, constituted negligence * * * If the agent, had followed the instructions in the telegram, located the car and held it, the diversion would have been accomplished at East St. Louis, and this controversy would not have arisen."

In our opinion, the contention made is not tenable. When the telegram sent by the defendant on Saturday afternoon, January 10, reached the agent of the Mobile & Ohio Railroad at East St. Louis that afternoon at twenty minutes to five, the car of Silica had then been out of the possession of that railroad for over 18 hours, it having been delivered by them to the switching line for transfer, the previous

for the first time that night in Chicago and then to
Chicago, but under the claim of the Chicago Police
Illinois, to investigate and then back to Chicago.

As stated by counsel for the defendant in the
brief filed in this court, the chief contention in this
case has to do with the contention as to when the tele-
gram was sent by the defendant on January 10, whether it was
mailed on January 10 (the railroad company to which the tele-
gram was addressed). It is the defendant's contention
that the railroad company is failing to comply with the
request in that telegram and is accordingly the
divisor of the cost of the telegram. Counsel say in
their brief filed in this court that when the cost of
the telegram was divided for forty-three hours
after the telegram was delivered to the receiving office
and for one day further investigation, that, beyond any
question, established negligence. It is the company's
contention that the investigation in the telegram, located the
cost and said it, the investigation would have been accomplished
at that time, and this controversy would not have
arisen.

In our opinion, the contention made is not tenable.
That the telegram was in the hands of the railroad company
on January 10, whether the cost of the telegram was
paid or not, is a matter that is not at issue. The
cost of the telegram was paid out of the pocket
of the railroad company for that day, it being the duty
of the railroad company to transmit the telegram.

evening at 9:30. Moreover, the telegram was too indefinite to enable the agent to take prompt and intelligent action. It did not state who the consignor of the shipment was; who the consignee was; where the shipment had originated, or to what point it was consigned. It was impossible for the agent to know from the telegram whether the car had at that time reached East St. Louis, or if not, when it might reasonably be expected. In our opinion, negligence may not reasonably be imputed to the railroad because no action was taken until the following Monday morning, when it received a letter enclosing the bill of lading which gave the full information. The stipulation of facts is to the effect that this letter was received about 8:30 on Monday morning. Three hours later a telegram was sent to the agent of the railroad to which this car had been delivered on the Friday evening previous, requesting that agent to intercept this car and divert it to Chicago. By its own letter the defendant shows that it appreciated the fact that its effort to overtake this car might not prove successful until the car had gone beyond East St. Louis, because in that letter the defendant said to the agent of the Mobile & Ohio Railroad Company: "In the event this car has left your lines, please be kind enough to handle with proper officials so that it will go into Chicago as requested above."

In our opinion, the stipulation contains such facts as to show that the agent of the railroad to which the plaintiff's requests were forwarded, made every effort that could reasonably be required and within a reasonable time after getting the necessary information, to comply

evening at 11:00. However, the telephone was not functioning
to enable me to get in touch with the telephone exchange.
It was not until the morning of the 11th that I was able to
the exchange was; where the telephone had originated, so as
this point it was a mistake. It was impossible for the
agent to know from the telephone whether the call was
at that time because that is, I am, with it
right necessarily be repeated. In my opinion, a telephone
may not necessarily be required in the railroad business as
action was taken until the following morning morning, when it
received a letter containing the bill of lading which gave
the full information. The delivery of bills is to the
effect that this letter was received about 11:00 on Monday
morning. When the letter was sent to the
agent of the railroad to which this was sent, it was
on the Friday evening morning, requesting that agent to the
forward this bill and it was at the time. At the time
I have the bill which shows that it was received the day that
it should be received this was not done and was not
until the car had gone beyond that it, I am, because in
that letter the delivery was to the agent of the railroad
a bill of lading document: "in the event this car has left
your lines, please be kind enough to handle with prompt
attention so that it will go into Chicago as requested
above."

In my opinion, the railroad's mistake was
to let the car go out of the railroad to which
the material's possession was transferred, and very often
that could possibly be required and within a reasonable
time after getting the necessary information, to properly

with the diversion order forwarded by the defendant. Some other questions of law are referred to in the briefs, which we do not consider material to a decision of this case, and we shall, therefore, not refer to them here.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

with the reservation order forwarded by the Government. The
other questions of law are referred to the District Judge
as he has considerable practice in a District of this kind, and
we will, therefore, not refer to them here.

For the reasons stated the judgment of the District
Judge is affirmed.

JUDGMENT AFFIRMED.

PAUL J. HENRY, J. CLERK.

60718
365 - 30218

MAX ASTRAHAN,

Appellee,

v.

DAVID SPITZ,

Appellant.)

4996a
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 661

Opinion filed Jan. 20, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendant, Spitz, seeks to reverse a judgment for \$45.00, recovered against him in the Municipal Court of Chicago by the plaintiff Astrahan.

The plaintiff had delivered a suit of clothes to the defendant to be cleaned, and when it was returned the coat was burned. The testimony shows that the defendant did not have facilities for doing cleaning in his own shop and he sent the suit to the Star Cleaners & Dyers to be cleaned. One Roth testified that he was the manager of the Star Cleaners & Dyers which concern had been in the business of cleaning and dyeing clothes for over fifteen years; that his firm received the plaintiff's suit from the defendant in September, 1924, and during the process of cleaning, while it was in the dry cleaning machine, an explosion occurred and the plaintiff's suit, together with other clothes in the machine at the time, was burned and damaged. He testified that he was there at the time of the explosion but that he did not know what caused it; that it was a mystery; that the machine used by his firm was the same kind as that used by all such establish-

1938 - 2013

THE ATTORNEY

APPEAL

V.

THE STATE

Defendant.

2401 A. 661

Opinion filed Jan. 30, 1938.

MR. FRANKLIN J. LUTHER, JR., DISTRICT ATTORNEY

Opinion of the court.

By this court the defendant, while, under the
provisions of the act of 1935, recovered against him in
the criminal court of Chicago by the plaintiff's testimony.

The plaintiff has delivered a copy of his
to the defendant to be examined, and when it was returned
the court was informed. The testimony shows that the de-

endants are not have facilities for doing cleaning in
his own shop and he sent the suit to the first cleaners
A system is in operation. One suit testified that he was
the manner of the first cleaners A system which involves
had been in the business of cleaning and drying clothes
for over fifteen years; that his firm received the plain-

fill's suit from the defendant in December, 1934, and
during the process of cleaning, while it was in the dry
cleaning business, an explosion occurred and the plaintiff's

suit, together with other clothes in the vicinity of the time,
was burned and damaged. He testified that he was there at
the time of the explosion and that he did not know what

caused it; that it was a tragedy; that the machine used by
his firm was the same kind as that used by all such establish-

ments in the City of Chicago, and that the process employed was the most approved and up-to-date process for dry cleaning purposes; and that the machine was in good condition at the time of the explosion.

We have recently had occasion to consider a similar case involving the same cleaning and dyeing establishment. There a suit of clothes given to the Star Cleaners & Dyers about six months prior to the occurrence involved in the the case at bar, was destroyed when a similar explosion took place. In that case the same witness, Roth, the manager of that establishment, gave substantially the same testimony. There also, he referred to the explosion that had taken place, as a "mystery". Although there is some more to Roth's testimony in the case at bar than there was in the other case referred to, in that here Roth testified that the machine was in good condition, we are of the opinion that there is no substantial difference between the two cases. The title of the case referred to is, Sheets v. Star Cleaners & Dyers, et al, Illinois Appellate Court, First District. case No. 39650, Opinion filed October 28, 1935, not yet reported. As in that case, so in the case at bar, the testimony submitted by the plaintiff made out a prima facie case of negligence against the defendant.

Counsel for the defendant call our attention to a number of cases, holding that where a bailee shows that the article bailed was lost, damaged or destroyed by theft, fire or other accident, the plaintiff cannot recover without showing that such theft, fire or accident was due to the negligence of the bailee. The same cases were relied upon by the

same counsel in the Sheets case, supra. In the opinion filed in that case we pointed out that those cases were not in point because there the forces causing the destruction of the property were not within the control of the bailee, while here, as in the Sheets case, the machine in question was under the management and control of the bailee at the time the damage was done and the loss suffered. Moreover, we have had occasion to hold that the correct rule is not as contended by counsel for the defendant. Where a bailor makes out a prima facie case as to negligence in an action against the bailee, such prima facie case is not overcome merely by a showing on the part of the bailee to the effect that the goods bailed had been lost through theft or fire, but in order to overcome such prima facie case the bailee is obliged to show further that such loss was not caused by his negligence or that it occurred in spite of the exercise on his part of a degree of care appropriate to the circumstances surrounding the bailment. Olemenson, Admr. v. Whitney, Illinois Appellate Court, First District, case No. 29811, opinion filed October 28, 1925, not yet reported.

In our opinion the defendant in the case at bar did not prove sufficient facts to overcome the prima facie case made out by the plaintiff's evidence. No contention is made that the only duty of the defendant was to use reasonable care in selecting a person or concern to do the cleaning, and that if he did, he would not be liable.

-4-

For the reasons stated the judgment of the
Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

For the reasons stated the judgment of the

Supreme Court is affirmed.

JUDGMENT AFFIRMED.

TATUM AND COMPANY, PL. COMMER.

313 - 30166

CHARLES J. FORSBERG,

Appellant,

v.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Appellee.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 661

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion of
the court.

On October 20, 1919, plaintiff was appointed,
by the Board of Education of Chicago, Business Manager of
the Board for a term of four years at a salary of \$10,000.00
per year. Upon being appointed, he entered upon the dis-
charge of his duties and continued in the performance
of them until September 15, 1922, when at his request, he
was given a leave of absence and he has performed no ser-
vices as business manager or otherwise since that date.
He was paid his salary up until the time he took the leave
of absence and has been paid nothing since that time. He
has brought this suit to recover \$11,041.77, which he claims
was due him as salary from the time he took the leave of
absence in September, 1922, until the expiration of the
period of time for which he was appointed business manager,
October 20, 1923. The case was tried before the court
without a jury and there was a finding and judgment in
defendant's favor and plaintiff appeals.

212 - 20122

CHARLES A. FORTNEY,

Appellant,

v.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Appellee.

OFFICIAL FORM

CHICAGO COURT,

CHICAGO, ILL.

240 I.A. 661

Opinion filed Jan. 30, 1926.

MR. JUSTICE DELANEY delivered the opinion of

the court.

On October 30, 1925, plaintiff was appointed,

by the Board of Education of Chicago, business manager of
the board for a term of four years at a salary of \$10,000.00
per year. Upon being appointed, he accepted upon the dis-
charge of his duties and continued in the performance
of those until November 15, 1925, when at his request, he
was given a leave of absence and he has performed no ser-
vices as business manager or otherwise since that date.
He has held his salary up until the time he took the leave
of absence and has been paid nothing since that time. He
has brought this suit to recover \$10,000.00, which he claims
was due him as salary from the time he took the leave of
absence in November, 1925, until the expiration of the
period of time for which he was appointed business manager,
October 30, 1929. The case was tried before the court
without a jury and there was a finding and judgment in
defendant's favor and judgment appealed.

It is plaintiff's contention that during the period beginning October 20, 1919, and ending October 20, 1923, he was the legal business manager of the Board of Education - that he held the legal title to this office and therefore, was entitled to the salary, since he had not resigned or abandoned his office; that under the statute, Sec. 129, Chap. 123 of the revised statutes he could only be removed as business manager for cause by a vote of the members of the Board of Education, after charges had been filed against him and after a hearing; that no charges were ever made against him, and therefore, he held title to the office during the four years period for which he was elected.

The record discloses that no charges were ever made against plaintiff by the Board of Education, but on September 6, 1922, he wrote a letter to the President of the Board of Education, stating that the grand jury of Cook County had returned several indictments against him; that he was absolutely innocent of any wrong doing and that this would appear upon the trial of those indictments. The letter then went on to say "I feel that I should be given a leave of absence from my official duties to have an opportunity to prepare for presenting all the facts to a jury of twelve impartial men and be fully acquitted of the unjust charge which has been laid against me.

"For these reasons I respectfully ask that you grant me a leave of absence at once."

It further appears that this letter was brought

It is certainly a contention that during the

period beginning October 20, 1912, and ending October

20, 1913, he was the legal business manager of the board

of education - that he said the legal title vests in the

board, was entitled to the salary, since he had not re-

signed or abandoned his office; that under the statute,

Sec. 153, Chap. 124 of the revised statutes he could only

be removed as business manager by a vote of the

board of the board of education, after charges had been

first against him and after a hearing that no charges

were ever made against him, and, therefore, he held title

to the office during the time years passed for which he

was elected.

The second contention is that no charges were ever

made against plaintiff by the board of education, but on

September 8, 1913, he wrote a letter to the president of

the board of education, stating that the board July 21

last County had returned several indictments against him;

that he was absolutely innocent of any wrong doing and that

this would appear upon the trial of these indictments. The

letter then went on to say "I feel that I should be given

a leave of absence from my official duties for some time

pending the progress of the prosecution of the case so as to

be free to devote my entire time to the case and to be

able to give the best of my service to the board.

"The board returned I respectfully ask that you

grant me a leave of absence as requested."

It further appears that this letter was brought

before the Board on September 13, 1932, with the recommendation of the President of the Board that the request be granted. The recommendation of the President was concurred in at that time. The evidence further shows, without contradiction, that plaintiff performed no services for the Board of Education as business manager or otherwise, after that date; that he made no claim at any time for salary after that date until September 17, 1933, when he wrote the Board of Education a letter in which he stated: "I respectfully call your attention to the fact that I have not received my salary as business manager of the Board of Education for the period from September 7, 1932, to the expiration of my term of office May 28, 1933."

On September 13, 1932, the record shows that plaintiff's request for leave of absence was granted and it further shows that December 13th following, the Board elected "J. A. Gilford as acting business manager at the present salary during the absence of business manager, Mr. Forsberg;" that on January 14, 1933, the acting business manager, Gilford, wrote the president of the Board, stating that on account of the state of his health and under the advice of his physician, he desired a leave of absence for a period of six months from February 16, 1933, and recommended that John E. Byrnes, who had been with the Board of Education some twenty-six years, serving as chief clerk in the business manager's office, be appointed his successor in his absence as assistant business manager and that his salary be fixed at \$6,000.00 per annum, and that the duties heretofore performed by me be imposed upon him." On that

5

On January 17, 1933, the party moved into
FOXHILL'S rooming house for leave of absence was granted and
it further stated that because of the following the leave
extended to 1. A. HILLMAN was having business matters at the
company's office during the absence of the leave granted,
Mr. Foxhill, died on January 14, 1933, the party business
manager, HILLMAN, wrote the president of the party, stating
that on account of the state of his health and under the
action of his physician, he desired a leave of absence for
a period of six months from January 15, 1933, and return
about that time. H. HILLMAN, who had been with the party of
the party since 1925-26 years, having no other work in
the party manager's office, he released his statement in
his statement as a statement HILLMAN was not that his
salary be fixed at \$5,000.00 per annum, and that the duties

date the Board of Education granted Gilford's request for a leave of absence and on February 14, 1923, it was ordered by the Board that Gilford be paid at the rate of \$8,000.00 per annum during the time he was on leave of absence and on the same date it was ordered by the Board that Louis F. Wilk be made acting business manager of the Board of Education, owing to the leave of absence of Gilford. On June 8, 1923, the President of the Board of Education presented Wilk's resignation as Secretary of the Board and as acting business manager. The resignation to become effective June 21, 1923. The resignation was accepted and John E. Byrnes was appointed acting business manager to succeed Wilk at a salary of \$10,000.00 per annum effective June 21, 1923. The record of the Board further discloses that on February 13, 1924, it was stated that it appeared that the Board had for sometime delayed filling the position of business manager and that Byrnes had been acting business manager. Thereupon Byrnes was elected business manager for a period of four years at a salary of \$12,000.00 per year. The record further shows for the year 1922-1923 there was appropriated for the business manager's department more than \$32,000.00, \$10,000.00 of which was for the manager's salary, and that during that year more than \$28,000.00 of the appropriation was expended. It further appears that plaintiff was tried on the charges made against him in the Criminal Court and on June 23, 1923, was acquitted of all the charges.

the fact that the defendant was not a resident of the State of New York at the time of the commission of the crime, and that the crime was committed in the State of New York, the court held that the defendant was not liable for the crime.

Plaintiff in support of his contention that since he held a legal title to the office, he was also entitled to the salary, cites the case of People v. Coffin, 279 Ill. 401 and other cases. In that case it was held that the legal right to an office carries with it the right to the salary which is incident to the title to the office and not to its occupation "and where a de jure officer of a municipality has been wrongfully deprived of his office", he may maintain an action of mandamus to compel his re-instatement and the payment of his salary. It is clear that this case does not sustain plaintiff's contention that he is entitled to the salary which he claimed, because in the instant case no claim is made that the Board of Education wrongfully deprived plaintiff of his office. On the contrary, he was granted a leave of absence at his own request and during the time he was absent on leave, he made no complaint that he was not receiving his salary. The first intimation that he was claiming salary for this period of time is shown in his letter dated September 17, 1923. Not only did plaintiff fail to make any demand or claim for his salary during the period of his leave of absence but, although his trial in the Criminal Court was disposed of in July, he did not return to his position with the Board of Education or offer to resume his duties as business manager of the Board, notwithstanding the fact his term of office for which he now claims his salary did not expire until the following October. This shows a constructive if not an actual abandonment of his office.

70-104211 is reported by his confidential source
 since he held a legal title to the office, he was also
 entitled to the salary. After the death of Louis V. Gellin
 was ill, and other cases. In that case it was held
 that the legal right to an office entitles one to the
 right to the salary when it is incumbent on the office at the
 office was not in the community and there was no
 officer of a corporation has been successfully deprived
 of his office, he may maintain an action of mandamus
 to compel his re-instatement and the payment of his salary.
 It is also held that where one has been ousted of his
 title, compensation to him is entitled to the salary which
 he should, however in the instant case no claim is made
 that the Board of Education wrongfully ousted plaintiff
 of his office. On the contrary, he was granted a leave
 of absence at his own request and during the time he was
 absent on leave, he could not complain that he was not
 receiving his salary. The first indication that he was
 claiming salary for the period of time in which in his
 letter dated September 17, 1933. Not only did plaintiff
 fail to make any demand or claim for his salary during
 the period of his leave of absence but, although his trial
 in the District Court was argued in July, he did not
 return to the position with the Board of Education or other
 to receive his duties as business manager of the Board.
 notwithstanding the fact his term of office for which he
 was elected the salary did not expire until the following
 October. This shows a constructive if not an actual
 abandonment of his office.

Plaintiff further contends that he was entitled to his salary because the record discloses that an appropriation was made for the office and the salary thus appropriated was not paid to any other person during his absence. Counsel for the Board of Education made no reply to this contention but an examination of the evidence, which we have above set forth, discloses that other persons performed plaintiff's duties, during plaintiff's absence and were paid the salary, because it appears that of the \$32,000.00 appropriated each year, more than \$26,000.00 had been expended. We think it clear that plaintiff having been granted a leave of absence, at his own request, and having performed no services after he was granted a leave of absence and other persons having been appointed by the Board of Education to perform the services required of the business manager, and these persons having been paid in good faith practically all of the salary appropriated, plaintiff cannot recover. No authority has been cited and we know of none that would warrant the recovery under the facts as shown in this case.

The judgment of the Superior Court of Cook County is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

[illegible]

319 - 30172

KENNETH SHELTON, a minor,
by his next friend,

Appellee,

v.

JOSEPH G. SIREIKAS,

Appellant.

APPEAL FROM

CIRCUIT COURT,

COCK COUNTY.

240 I.A. 661

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion
of the court.

Plaintiff, a boy about six years of age, by his
next friend, brought suit against the defendant to re-
cover damages for personal injuries claimed to have been
occasioned by plaintiff being struck and injured by de-
fendant's automobile. There was a verdict and judgment
in plaintiff's favor for \$2500.00 and the defendant appeals.

The record discloses that about two o'clock on
Sunday afternoon of March 21, 1920, plaintiff, who was
crossing Milwaukee avenue, was struck and injured by
defendant's automobile, which was being driven in a
northwesterly direction on Milwaukee avenue at the inter-
section of Milwaukee avenue and Central Park avenue,
Chicago. Milwaukee avenue at this point runs in a north-
westerly and southeasterly direction and Central Park avenue,
a north and south street, intersects it. Plaintiff's
theory of the case, as shown by the evidence, was that
he was at the northeast corner of the intersection, which
was a business section; that he started south across

218 - 10775

EXHIBIT 10775, 4 pages,
by the court clerk.

Appellate.

APPELLATE COURT

DIRECT COURT

COURT REPORT

v.

THE STATE OF NEW YORK

Appellate.

240 I.A. 661

Opinion filed Jan. 30, 1938.

THE COURT OF APPEALS, in the opinion of the court.

of the court.

The court, in its opinion, is of the opinion that the

best friend, and that the defendant is the

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Milwaukee avenue and when he had reached the first street car track in Milwaukee avenue, he was struck by defendant's automobile which was driven in a northwesterly direction along that street car track. On the other hand, the defendant's theory was that plaintiff was at the southeast corner of the intersection and that he started across Central Park avenue in a northwesterly direction at the cross-walk on the southwestern side of Milwaukee avenue; that when he reached a point about the center of Central Park avenue, he suddenly turned toward the north passing behind a street car, which was proceeding southeasterly in Milwaukee avenue, and directly in front of defendant's automobile so that when plaintiff came into view behind the street car, it was impossible for the defendant to stop the automobile in time to prevent injuring plaintiff.

The defendant contends (1) that the verdict is against the manifest weight of the evidence (2); that it is excessive and (3) that the court erred in giving an instruction at plaintiff's request.

1. A careful examination of all the evidence in the record shows that it is in irreconcilable conflict. There is considerable confusion in the record as to how the accident occurred and this has not been clarified by argument of counsel. Witnesses for plaintiff gave testimony to the effect that plaintiff was at the northeast corner of the intersection of the two streets and that he started south across Milwaukee avenue at the east cross-

Michigan Avenue and when he had reached the first street
west of Michigan Avenue, he was struck by a
taxi cab which was driven in a southerly
direction along that street car track. On the same
block, the witness's theory was that plaintiff was at
the southeast corner of the intersection and that he
started across against the traffic in a southerly
direction on the crosswalk on the southwestern side of
Michigan Avenue; that when he reached a point about
the center of the block, he suddenly turned
across the street toward a street car, which was
proceeding southerly in Michigan Avenue, and disem-
barked in front of defendant's automobile as that car plain-
ly came into view behind the street car, it was im-
possible for the defendant to see the automobile in
time to prevent injuring plaintiff.

The facts and contents (1) that the verdict is
against the plaintiff without the evidence (2); that it is
conclusive and (3) that the court acted in giving the in-
struction at plaintiff's request.

1. A careful examination of all the evidence in
the record shows that it is in favor of the plaintiff.
There is considerable evidence in the record as to how
the accident occurred and this has not been omitted by
the court at all. Although the plaintiff has been
wrong in the effect that plaintiff was at the northeast corner
of the intersection of the two streets and that he
started across against Michigan Avenue at the same cross-

walk of Central Park avenue; that when plaintiff reached the first street car track in Milwaukee avenue, he was struck by defendant's automobile which was being driven northwesterly in that street car track; that the defendant's car was traveling from fifteen to twenty-five miles per hour and that there was no other traffic in the street that would interfere with the defendant's view of plaintiff.

John R. Bettis called by the defendant testified that he was standing at the southwest corner of the intersection and that plaintiff was at the southeast corner; that plaintiff started across Central Park avenue toward the witness and when he had reached a point some where near the center of Central Park avenue on the southwesterly cross-walk, he suddenly turned to the north in front of defendant's approaching automobile; that there was no other traffic in the street to obstruct the witness' view or view of the driver of the automobile from seeing the boy; that he did not remember whether there were any street cars passing at the time; that the boy suddenly turned and ran directly in the path of the automobile and was struck and injured. The defendant and another man who were riding in the automobile testified, and their testimony is to the effect, that the automobile was being driven northwesterly in the street car track; that as it approached the east side of Central Park avenue, its speed was slackened on account of another automobile being driven south in Central Park avenue, passed in front of the defendant's automobile and turned southeasterly down Milwaukee avenue; that a street car which was being driven southeasterly down Milwaukee

with it Central Park Avenue; that when plaintiff returned
the first of that car track in witness' view, he was
sight of defendant's automobile which was being driven
northwesterly in that street and track; that the witness
did not see traveling from fifteen to twenty-five miles
per hour and that there was no other traffic in the street
that would interfere with the defendant's view of plaintiff.

John A. Battle called by the defendant testified
that he was standing at the southeast corner of the inter-
section and that plaintiff was at the southeast corner;
that plaintiff started across Central Park Avenue shortly
the witness and when he had reached a point some where near
the corner of Central Park Avenue on the southeasterly
crosswalk, he suddenly turned to the north in front of
defendant's approaching automobile; that there was no other
traffic in the street to obstruct the witness' view of
that of the driver of the automobile from seeing the boy;
that he did not remember whether there were any street
cars traveling at the time; that the boy suddenly turned and
ran directly in the path of the automobile and was struck
and injured. The defendant and another man who were riding
in the automobile testified, and their testimony is to the
effect, that the automobile was being driven northwesterly in
the street and track; that as it approached the east side of
Central Park Avenue, its speed was slackened on account
of another automobile being driven east in Central Park
Avenue, passed in front of the defendant's automobile and
turned southeasterly down Central Avenue; that a street
car which was being driven southeasterly down Central

avenue was immediately behind this automobile when it turned southeasterly in Milwaukee avenue and that the plaintiff ran out from behind the street car in front of defendant's automobile when it was but about five or eight feet from him, so that it was impossible to stop the automobile in time to prevent striking the boy. There is other testimony in the record which would tend to affect the credibility of several of the witnesses so that the question to be determined by the jury depended upon their view of the credibility of the witnesses. They were in much better position, as was the learned trial judge, to determine the truth of the matter in controversy than we are. We have but the printed page before us. The jury found in the plaintiff's favor and after a careful consideration of all the evidence in the record, we are unable to say that the finding is against the manifest weight of the evidence. In these circumstances, we are not authorized to disturb the judgment.

2. The defendant further contends that the verdict is excessive in that the evidence discloses that plaintiff's injuries were but slight. The evidence shows that the boy was knocked down and rendered unconscious; that there were contusions about his face and head; that he received surgical and medical attention, a number of stitches being required to reduce a cut which plaintiff sustained in his right cheek; that there was also a depression and fracture of the bones of both tables of the left side of the

anyone was immediately behind this automobile when it
passed the witness in Lincoln street and that the
witness did not then behind the street car in front
of defendant's automobile when it was about five
or eight feet from him, so that it was impossible
that the witness in line in front of the
car. There is other testimony in the record which
would tend to show the possibility of several of
the witnesses to have the question to be determined
by the jury depending upon their view of the possibility
of the witnesses. They were in such better position
as was the witness with regard to observing the front
of the car in connection with the car, in fact not
the witness was behind him. The jury found in the plain-
tiff's favor and after a careful consideration of all the
evidence in the record, we are unable to say that the
finding is against the weight of the evidence.
In these circumstances, we are not inclined to dis-
turb the judgment.

2. The defendant further contends that the wit-
ness is incorrect in that the witness did not claim
that the witness was not killed. The witness does not
say that he was killed and that he was not killed; that
there were witnesses about the time and place; that he
never saw the witness and never saw the witness
being removed to the hospital and that the witness was
in the right place; that there was also a hospital and
the witness of the witness of the witness of the witness of the

head; that the boy had been in good health prior to the accident; that he apparently recovered ⁱⁿ a short time, but afterwards was troubled with headaches and nervousness, and lost considerable weight. The testimony of the doctors is to the effect that the injuries, to some extent, are permanent; that there was a protrusion on the skull at the side of the depression at the time of the trial, which occurred more than four years after the accident. In these circumstances, we are unable to say that the verdict is so excessive as to warrant interference on our part.

3. Complaint is made to instruction No. 15, given at the request of the plaintiff. By it the jury were told "that a person operating an automobile upon the public streets of a city, must know and in law is bound to know that the public have the right to the use of the public streets and that persons may be upon them and it is the duty of persons operating automobiles upon the public streets to use reasonable care to avoid injuring persons who are upon the public streets.

The court does not by this or any other instruction in the case intimate any opinion on any question of fact in the case."

We think this instruction ought not to have been given, as it might tend to mislead the jury. However, the instruction did not direct a verdict and by other instructions the jury were told that the driver of defendant's automobile was not required to exercise the highest degree

board; that the boy had been in said vehicle in the
vicinity; that he apparently ⁱⁿ saw the car, and
thereafter was furnished with information and statements,
and that he subsequently advised the testimony of the
accused is to the effect that the injury, to some extent,
was permanent; that there was a laceration on the skull
at the side of the forehead at the time of the trial,
which occurred more than two years after the accident.
In these circumstances, it was held to say that the
evidence is an excessive and to warrant instructions as
the fact.

2. The question is made to instruction No. 12,
given at the request of the defendant. By it the jury
were told that a person operating an automobile upon the
public streets of a city, when known and in the power
to know that the public have the right to the use of the
public streets and that persons may be upon them and it is
the duty of persons operating automobiles upon the public
streets to use reasonable care to avoid injuring persons
who are upon the public streets.

The court does not by this or any other instruction
take in the case any question of any question of
fact in the case.

We think this instruction should not be reversed
even, as it might tend to mislead the jury. However, the
instruction did not direct a verdict and it is not
shown that the jury were told that the driver of the defendant's
automobile was not negligent in causing the injury alleged.

of care to avoid injury to the plaintiff, but the law only required that he exercise ordinary care; that if the jury believed that plaintiff was injured as a result of a mere accident without any negligence on the part of the defendant no recovery could be had. The issue was not complicated, but simple and we think upon the whole the jury were fairly instructed and would not be misled by the instruction.

The judgment of the Circuit Court of Cook County is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

of such a kind as to be a serious injury to the health, and the law
only requires that he should be treated as a person who is
the party believed that the plaintiff was injured as a
result of a mere accident without any negligence on
the part of the defendant or person who was injured. The
law was not complied, and again and so this case
the whole the law were fully satisfied and would not
be aided by the defendant.

The judgment of the District Court of Cook

County is affirmed.

ATTEST.

THOMAS, J. L. AND DAVID, J. J. JUDGES.

335 - 30188

ALCOCK PLUMBING COMPANY,
a corporation,

Appellee,

v.

CLAUDIA E. HUNTER, herein
sued as MRS. R. C. HUNTER,

Appellant.)

APPEAL FROM

MUNICIPAL COURT,
OF CHICAGO.

240 I.A. 661

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion
of the court.

Plaintiff brought an action against the defendant to recover a claimed balance due of \$950.72, with interest thereon, making a total of \$981.82 "for work done and material furnished on an open account, which became an account stated on the 3rd day of January, A. D. 1922." A copy of the account was attached to the statement of claim and states that it is for "installing and overhauling plumbing and heating" at No. 3340 South Michigan avenue. The defendant filed an affidavit of merits in which she states her name to be "Claudia E. Hunter, sued as Mrs. R. C. Hunter" and avers that she is not indebted to the plaintiff in the sum of \$981.82 or any other sum as alleged in plaintiff's statement of claim, but on the contrary, avers that plaintiff is indebted to her "by recoupment and setoff in a sum far in excess of the sum so alleged to be due from the defendant to the plaintiff." She then specifies the particulars whereby she claims plaintiff

3401.A.661

Opinion filed Jan. 20, 1936.

MR. JUSTICE BRIDGES delivered the opinion

of the court.

Plaintiff brought an action against the defendant

and to recover a claimed balance due of \$250.00, with interest

at 6 per cent, making a total of \$251.50 for costs and

expenses incurred on an open account, which became an

account stated on the 2nd day of January, A. D. 1935.

A copy of the account was attached to the statement of

claim and stated that it is for "accounting and other

law business and nothing at all to do with the plaintiff's

the defendant filed an affidavit of service in which she

stated that she is the plaintiff's agent, and as such

M. O. Smith and where that she is not indebted to the

plaintiff in the sum of \$250.00 or any other sum as alleged

in plaintiff's statement of claim, but on the contrary,

where that plaintiff is indebted to her by two hundred

and ninety five dollars in full in return of the sum so alleged

to be due from the defendant to the plaintiff. The case

was decided for the plaintiff and the balance of \$251.50

ALICE HENRIKSON, Plaintiff,
vs.
ALICE HENRIKSON, Defendant.

ALICE HENRIKSON, Plaintiff,
vs.
ALICE HENRIKSON, Defendant.

ALICE HENRIKSON, Plaintiff,
vs.
ALICE HENRIKSON, Defendant.

ALICE HENRIKSON, Plaintiff,
vs.
ALICE HENRIKSON, Defendant.

owes her to the effect that there was an oral agreement between plaintiff and defendant and her husband, who own the property at No. 3340 South Michigan avenue; that in consideration of certain plumbing work to be done by plaintiff, she and her husband would pay to plaintiff the value of the work and materials; that the work was to be done in a workmanlike manner; that plaintiff negligently and carelessly performed the work so that a bath tub situated on the second floor leaked and caused damage to the extent of \$225.00; that plaintiff removed and carried away Lead pipe from the premises of the value of \$500.00 without defendant's knowledge or consent; that plaintiff also removed from the premises a bath tub of the value of \$50.00 without defendant's consent; that the work was so negligently done by plaintiff that sewer gas escaped in the living rooms of the building and rendered them uninhabitable from October, 1921 until July, 1922, thereby damaging defendant in a sum "to far exceed the amount claimed by plaintiff." It is further averred that plaintiff agreed to repair the basement of the premises so as to prevent leaking and overflowing occasioned by rain; that plaintiff did the work so negligently in this regard that rain got into the basement and caused damage "which said damage and injury will more fully appear at the trial"; that more than half of the work which plaintiff agreed to do, it afterwards refused to perform and, as a result of this, the defendant was compelled to secure the services of other workmen to perform the work and defendant was compelled to expend for this work on account of plaintiff's default about \$600.00.

The case went to trial before a judge and a jury and plaintiff put in evidence tending to show the terms of the agreement entered into between it and defendant; that the work had been done and payments made thereon from time to time by the defendant and numerous statements sent to the defendant, showing the balance claimed to be due. Plaintiff also offered further evidence to the effect that the defendant agreed to pay the balance which was \$802.22. The evidence offered on behalf of plaintiff as to what work was done was very meager. The facts were not at all well brought out. But in view of the pleadings, it is clear that plaintiff was entitled to recover the amount of its claim.

At the close of the plaintiff's case, the defendant moved for a directed verdict which was denied and apparently defendant stood by her motion, whereupon the court instructed the jury to find for the plaintiff for \$802.22. Since it appears that defendant's defense was based on the fact that she was entitled to recoup and setoff, she should have produced evidence tending to substantiate the averments of her affidavit of merits, but no such evidence was offered or produced. In these circumstances the learned trial judge was entirely warranted in directing a verdict for plaintiff.

The judgment of the Municipal Court of Chicago is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

344 - 30197

WILLIAM HANDEL,

Appellee,

v.

HERMAN S. WALDMAN and
LOUIS GOLD, On appeal of
LOUIS GOLD,

Appellant.)

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 662

Opinion filed Jan. 30, 1926.

MR. JUSTICE O'CONNOR delivered the opinion
of the court.

On December 2, 1924, judgment by confession
was entered in favor of plaintiff against the defendants
for \$1114.58. The statement of claim shows that the suit
was based on a promissory note for \$1,000.00 dated Sept-
ember 18, 1924. The defendant Gold moved the court to
vacate the judgment and for leave to defend. The motion
was denied and he appeals.

The record discloses that Gold, in support of his
motion to open up the judgment, submitted his affidavit
wherein he stated "that he did execute the note upon which
confession was entered, but states that the said note was
fully paid and that there remains nothing due on the same."
This is the substance of the affidavit. The record shows
that the court considered this affidavit and thereupon the
defendant by his counsel exhibited to the court ten checks
for \$100.00 each. These were exhibited to the court for
the purpose of showing that the note in suit had been paid
in full. The checks are dated April 26th, May 3rd, May 10th,

WILLIAM HAYWARD

Special Agent

2.

WILLIAM HAYWARD and
JAMES GORDON
Special Agent

Special Agent

Special Agent

Special Agent

Special Agent

240 I.A. 662

Opinion filed Jan. 30, 1936.

RE. WILLIAM HAYWARD and JAMES GORDON

of the report.

On November 2, 1935, following by comparison

was received in view of slightly revised the documents

for 1935. The statement of claim shows that the total

was found to be approximately 10% of the total value

about 10, 1935. The statement also shows that the

against the statement and for 1935 to 1936. The statement

was found to be accurate.

The second statement was found to be correct in all

as far as the statement, especially the statement

which was found to be correct in all respects the total value

was found to be correct, the statement that the total value

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was found to be correct, the statement that the total value

was found to be correct, the statement that the total value

May 17th, May 24th, May 31st, June 7th, June 14, June 21st and June 28, 1924. These checks are all made payable to plaintiff's order and signed by the defendant Waldman, and all of them show that they have been paid by the bank on which they were drawn. The record further discloses that after these checks were exhibited to the court by the defendant, Gold, plaintiff exhibited to the court a promissory note dated Sept. 18, 1924, for \$1,000. 00, due three months after date to plaintiff's order and signed by the two defendants. It further discloses that the plaintiff then exhibited to the court the note in suit which is signed by both defendants payable to plaintiff's order for \$1,000.00 and dated September 18, 1924. The bill of exceptions then discloses that the court overruled the defendant's, Gold, motion to vacate the judgment, and he prayed and was allowed an appeal.

In this court the defendant contends that the court erred in considering the evidence of the cancelled checks and the notes above mentioned, because under the law, on such a motion the trial court has no power "to listen to evidence or consider counter-affidavits on a motion of this character." We are unable to understand how the defendant can seriously maintain such a proposition in this court when the record discloses that the checks tending to show payment were offered by himself and no objection was made when plaintiff afterwards submitted the two notes. The statement of claim discloses that the note on which the judgment was confessed was dated September 18, 1924, while all of the checks offered by the defendant were made and paid prior to that date. The last of the checks being

dated June 28, 1924, it is obvious that these checks could not be given in payment of a note dated September 18, 1924. There is no merit in this appeal.

Nor would the affidavit filed by the defendant in support of his motion to vacate the judgment, warrant the court in doing so. It merely states that the defendant did not execute the note and then immediately proceeds to say that the note has been fully paid. These two statements are contradictory. No dates are given or facts set forth, and it is obvious that the court would not be warranted in vacating the judgment on such an affidavit.

The judgment of the Municipal Court of Chicago is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

about June 10, 1934. It is shown that these records
would not be given in response to a letter dated September
10, 1934. There is no entry in this regard.

It would be advisable to file up the following
in support of his motion to vacate the judgment, without
the court so doing so. It merely states that the
petitioner did not receive the note and that immediately
thereafter he was told the note had been paid. When
the petitioner was contacted, he stated that the note
or funds were lost, and it is obvious that the money
could not be returned in vacating the judgment entered
as aforesaid.

The judgment of the District Court of Chicago
is affirmed.

ATTORNEY.

ROBERT F. J. AND SISTER, J. CHICAGO.

353 - 30206

JOEL LEWIS AND JOHN I. SHEAHAN,
doing business as Lewis-Sheahan
& Company,

Appellants,

v.

PAULINE KRUJK,

Appellees.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 662

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion of
the court.

Plaintiffs brought suit against the defendant
to recover \$380.00, claimed to be due them for broker's
fees in obtaining a purchaser for defendant's property.
There was a verdict and a judgment in the defendant's
favor and plaintiffs appeal.

The record discloses that the defendant was
the owner of a two flat building located at No. 4356
Wilcox avenue, Chicago and employed plaintiffs, who were
real estate brokers, to obtain a purchaser for her prop-
erty or to exchange it for other property. The evi-
dence further shows that plaintiffs, through their re-
presentative, proposed to defendant that she exchange her
property for a six flat building belonging to other per-
sons who had also employed plaintiffs as real estate
brokers; that plaintiffs' representative showed the de-
fendant the six flat building, which was located at Nos.
5808-10 West Erie street, and that plaintiffs also showed

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Opintomitted Jan. 20, 1936.

the defendant's property to the owners of the six flat building for the purpose of securing an exchange of the properties; that after considerable negotiations, plaintiffs prepared a contract for the exchange of the properties, which was executed by the defendant and by the owners of the property on Erie street. The evidence further shows that sometime later the defendant refused to carry out the contract and it was abrogated by the parties executing quit claim deeds, the defendant executing and delivering to the owners of the Erie street property a quit claim deed and they in turn quit-claiming any interest they might have in defendant's property. The plaintiffs demanded payment of the \$390.00 commission claimed to be due them, which payment was refused, and this suit followed.

The defendant in her affidavit of merits set up that no commission was to be charged unless the deal was consummated by actual transfer of the properties and she further averred that in case the deal was consummated by the delivery of warranty deed, it was agreed that plaintiffs were to receive all their compensation for the services rendered, from the owners of the six flat building, and that in no event would the defendant be charged any commission.

The evidence shows that plaintiffs did a great deal of work in carrying on negotiations between the parties, and finally succeeded in having them execute a contract for the exchange of the properties. The defendant and some of her witnesses gave testimony to the effect that at the time the defendant signed the contract, which was on a regular blank form, the blank spaces had not been filled in. On behalf of the plaintiff, testimony was given

The defendant's property in the house of the late Mrs. ...
for the purpose of securing a mortgage on the premises, and
after considerable negotiations, the plaintiff secured a mortgage
on the property of the defendant, which was assigned to the
defendant and by the owner of the property on this point. The
defendant further shows that the mortgage was assigned to the
plaintiff and the mortgage was assigned by the plaintiff
to the defendant and it was assigned by the plaintiff
to the defendant and the defendant was assigned and delivered
to the owner of the property in the house of the late Mrs. ...
and they in turn delivered the property to the plaintiff and
the plaintiff's property. The plaintiff's property of the
house, the mortgage assigned to be the house, which was re-
served, and this was followed.

The defendant in the plaintiff's property was not
that the mortgage was to be assigned to the plaintiff and the
defendant by the plaintiff of the mortgage and the plaintiff
showed that in the house of the late Mrs. ...
of the property, it was shown that the plaintiff was to receive
all their mortgage for the house of the late Mrs. ...
of the late Mrs. ... and that in the house of the late
Mrs. ... was the mortgage.

The evidence shows that the plaintiff and the defendant
were in contact on the property between the parties, and the
evidence showed that the defendant was the owner of the property
of the property. The defendant and the owner of the property
showed to the plaintiff that the late Mrs. ... and the
defendant, which was a mortgage of the late Mrs. ...
was the plaintiff's property, the plaintiff's property was the

tending to show that the form on which the contract was written was fully filled in before it was signed by the defendant and the owners of the Erie street property. We are of the opinion that the version of the plaintiffs in this respect is sustained by the manifest weight of the evidence. A great deal of the testimony of the defendant and her witnesses is very unsatisfactory. The evidence shows that after the contract was executed, abstracts of title to the pieces of property were brought down to date and examined and certain objections made to the titles were removed. But the vital question for decision in the case was whether plaintiffs and defendant had agreed that the defendant would pay for their services. A witness for the plaintiff testified that the defendant had agreed to pay plaintiffs \$390.00 for their services, while defendant and one of her married daughters testified that no such promise was made, but on the contrary, that plaintiff's representative stated that he would not charge her any commission for the exchange of the properties, but that plaintiffs would obtain their pay entirely from the owners of the Erie street property. The defendant testified: "Charles Sheahan did not tell me that I would have to pay \$390.00 for commission. He said I don't want a penny from me because the other side want to pay all commission, because I ain't got the money." Mary Ascheim, defendant's daughter, testified that she was present when the contract was signed by her mother, and that plaintiffs' representative at that time did not say to her mother that she would have to pay a commission of \$390.00. Another daughter of defendant

Elizabeth Kruk, testified that she heard a conversation between plaintiffs' representative and her mother in which the representative said "that the commission would come entirely from the other side" meaning the owners of the Erie street property.

There is other evidence in the record showing that work plaintiffs did, but we think it unnecessary to refer to it, because plaintiffs would not be entitled to recover if the agreement between them and the defendant was that plaintiffs were to charge the defendant nothing, but were to obtain all of their pay from the owners of the Erie street property. The jury evidently were of the opinion that plaintiffs looked entirely to the owners of the Erie street property for their compensation, and upon a careful consideration of all the evidence in the record, we are unable to say that their finding is against the manifest weight of the evidence. In these circumstances, we are not warranted, under the law, in disturbing the verdict.

The judgment of the Municipal Court of Chicago is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

Eligible work, especially that which is a contribution
between scientific, constructive and not merely a which
the representative work, that the scientific work is
entirely from the other side, leaving the nature of the
this is not property.

There is other evidence in the report which
with scientific work, but we think it unnecessary to refer
to it. Because scientific work is not so entitled to respect
in the treatment between them and the treatment of the
scientific work is through the treatment of the
to obtain all of their pay from the source of the
about property. The fact is that the work of the
and scientific work is not so entitled to respect as the
about property for their contribution, and upon a working
consideration of all the evidence in the report, we are
unable to say that their standing is equal to the scientific
weight of the evidence. In these circumstances, we are
not warranted, under the law, in disturbing the verdict.
The judgment of the permanent court of appeals
is affirmed.

ATTORNEYS

THOMAS, T. A. AND TAYLOR, J. C. COUNSEL

58022

362 - 30215

THE PERFEX MANUFACTURING CO.,
a Corporation,

Appellee,

v.

A. DAIGGER & COMPANY,
a Corporation,

Appellant.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 662

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion
of the court.

Plaintiff brought an action of assumpsit
against the defendant to recover \$3229.54, claimed
as a balance due on account of merchandise sold and
delivered by plaintiff to defendant. A jury was
waived, the cause submitted to the court and after a
hearing, there was a finding and a judgment in plain-
tiff's favor for the amount of its claim and the de-
fendant appeals.

The record discloses that in March, 1921,
plaintiff sold defendant 135 "perfix overrun testers"
at a certain specified price. These were delivered from
time to time, the first delivery being made about March
28, 1921 and the last about July 30, 1921. The total
price of these testers was \$2485.10. The evidence shows
that upon each delivery, plaintiff submitted to the de-
fendant its bill which showed that the installment was

100 - 1001

THE UNITED STATES OF AMERICA

Plaintiff

v.

A. J. BROWN & COMPANY
Defendant

Case No.

1001 A. J. B.

Opinion filed Jan. 20, 1936.

1. THE COURT OF APPEALS has affirmed the decision

of the court.

Plaintiff sought to recover the amount of

the balance of the account of \$100.00, which

was a balance due to plaintiff at the time

of delivery of the goods. A jury was

called, and the case was tried to the jury and after a

verdict in favor of plaintiff and a judgment in

favor of the plaintiff for the amount of the debt and the

costs of the suit.

The record discloses that in March, 1931,

plaintiff sold to defendant the goods in question.

At a certain specified time. These were delivered to

the defendant, the first delivery being made about

May, 1931 and the last about July 30, 1931. The total

price of these goods was \$100.00. The balance of the

price was not delivered, plaintiff admitted to the de-

fendant the bill which showed that the defendant was

to be paid for within thirty days. The evidence further shows that no payments were made and in June and July 1921, after a considerable number of the testers had been delivered, plaintiff demanded payment of the defendant; that the defendant requested plaintiff to wait awhile so that the defendant would be in a position to know that the testers were all right, the defendant having sold them from time to time to its customers and this request seems to have been acquiesced in by plaintiff. A witness for the plaintiff testified that he sent a statement of the amount due each month to the defendant and there is no countervailing evidence on this point. No payment was made by the defendant until November 19, 1921, when it sent its check for \$216.03 to the plaintiff. The check is what was designated as a voucher check and at the bottom of it appears the following, written by the defendant, "Payment in full up to date of Perfex and Hydro accounts as per attached statements \$216.03." On the back of the check was printed the following, "This check is accepted by the payee in full settlement of the within account. If incorrect return without alterations and state difference." Accompanying the check, as stated in the voucher attached to it were two itemized statements, one of the Hydro account, which tends to show that the Hydro Company was indebted to the defendant for \$1878.80, the other showing the Perfex account in which defendant takes credit for \$1878.80 and after other small deductions shows a balance due plaintiff from the defendant of \$216.03, the amount of the check. Upon receipt of the check with the accompanying statements,

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plaintiff deposited the check and it was paid in due course through the bank on which it was drawn. On November 21, 1921, two days after the date of the check, plaintiff wrote the defendant a letter in which it stated: "We are in receipt of your voucher No. 107, dated Nov. 19th, in the sum of \$216.03, on which you have noted that it is in full payment of our account to date.

" We are unable to reconcile these figures with our books, but have deposited the same to the credit of your account and will submit a statement shortly of the differences which we cannot reconcile."

A witness for the plaintiff testified that in the latter part of November, 1921, (but whether before, or after the above letter was written, does not appear) he called defendant by telephone and talked with the president of the defendant company, and told him that he was speaking for the plaintiff company; that he had received defendant's check for \$216.03, which defendant seemed to have the idea was in full settlement of plaintiff's account; but that there was still a balance due of \$2229.54; that the defendant's president said that so far as the defendant was concerned plaintiff's bill was paid in full and if plaintiff expected to get any more money it would have to look to Henry W. Stern for it. The witness testified that he then stated that unless the \$2229.54 was paid promptly, plaintiff would turn the matter over to its attorneys. The defendant's president testified to this

conversation having been had substantially to the same effect, except that he said he told plaintiff's representative in that conversation that it was the defendant's understanding with Henry W. Stern, "who had always represented himself to be the owner of the Hydro Company and the Perfex Company" that the Hydro account could be deducted as defendant had done, and that plaintiff's representative replied that this could not be done.

The evidence further shows that sometime in January, 1930, Henry W. Stern was employed by the defendant company in charge of one of its departments and that he in turn employed his brother, Albert A. Stern, to act as salesman for defendant. Later, Albert A. Stern became the president of the plaintiff company, which company was organized as a corporation in the spring of 1931; that in 1930, when the two Stern brothers were working for the defendant, certain testers were sold to the defendant by the Hydro Company, a corporation, of which Henry W. Stern represented himself to be the owner. These Hydro testers were afterwards sold to the defendant's customers and proved to be unsatisfactory and they were returned by the customers to the defendant company and a charge was made by the defendant company against the Hydro Company on account of the return of these Hydro testers, the amount being \$1878.80, which the defendant claimed was due it from the Hydro Company. This is the account that the defendant sought to offset against plaintiff's claim on the theory that the plaintiff corporation was the successor of the Hydro corporation and that Henry W. Stern represented to the defendant that he controlled both of these companies. Evidence offered on behalf of the

conversations between them had substantially in the same effect.
It may well be said that Plaintiff's representative in
that conversation was not the defendant's representative
and that Plaintiff's representative testified that
the defendant's representative was not the defendant's
representative. It is true that the defendant's
representative was not the defendant's representative.

The evidence further shows that sometime in
January, 1937, Henry A. Stern was employed by the defendant
and company in charge of one of the departments and that
he is then employed by Plaintiff, Albert A. Stern, to act
as liaison for defendant. Later, Albert A. Stern became
the president of the Plaintiff company, which company was
organized as a corporation in the spring of 1937; that in
1937, when the two firms combined with working for the
defendant, certain matters were sold to the defendant by
the Plaintiff company, a corporation, of which Henry A. Stern
represented himself as the owner. These two firms
were afterwards sold to the defendant's successor and proved
to be unprofitable and they were returned by the defendant
to the defendant company and a check was made by the defendant
company against the Plaintiff company on account of
the return of these two firms, the amount being \$150,000.
With the return of claimant and the Plaintiff company,
this is the amount that the defendant agreed to deliver against
Plaintiff's claim on the Plaintiff's company and the
firm was the successor of the Plaintiff company and that
Henry A. Stern represented to the defendant that he was authorized
both as Vice President, Plaintiff company on behalf of the

plaintiff was to the effect that Henry W. Stern had no connection with the plaintiff corporation and that plaintiff knew nothing about the Hydro account until it received defendant's check for the \$216.03. This evidence is undisputed. The defendant contends that it sent its check to plaintiff accompanied by the two statements and tendered the check in full payment of plaintiff's claim, and that since plaintiff accepted and cashed the check, this constituted an accord and satisfaction. In support of this the case of Ostrander v. Scott, 161 Ill. 339 and other cases are cited.

It is held in the Ostrander case that payment of a part of a fixed and certain demand which is due and not in dispute is no satisfaction of the whole debt, even where the creditor agrees to receive it in full payment of the demand. This doctrine is put upon the ground that the discharge of the entire debt is without consideration. It is further held, in that case, that that rule has no application "to the honest settlement of unliquidated or disputed demands * * *" and if the balance due is disputed and the subject of an honest settlement and adjustment by the parties, such settlement will bar a recovery." It is also the law that it is not every dispute that will render an account unliquidated, but it is held that there must be a bona fide dispute as to how much is due to render the account unliquidated. Snow v. Griesheimer, 220 Ill. 106. The law as above stated is not disputed by either party. The question, therefore, for decision is whether there was a bona fide dispute between the plaintiff and defendant as to the amount that was due when

the defendant sent its check for \$203.18. There is no complaint that plaintiff's bill was due and unpaid, but it is defendant's contention that since it had the right to setoff against the amount of plaintiff's claim the Hydro account, this rendered the amount which the defendant owed plaintiff, uncertain and unliquidated, and therefore, the acceptance of the check by plaintiff constituted an accord and satisfaction. Of course, the account would be unliquidated if there was a bona fide controversy over defendant's right to setoff the Hydro account. Gestrander v. Scott, supra. But we are of the opinion that there was no dispute between the parties as to the amount due when the defendant tendered its check, because the evidence shows without dispute that the first plaintiff knew anything about the Hydro account, was when it received the check. And the uncontradicted evidence further is that the Hydro Company had no connection with the plaintiff company. But in any view of the case on this point, we are of the opinion that the finding of the trial judge to the effect that there was no bona fide dispute, is not against the manifest weight of the evidence. In these circumstances, it is obvious that there was no accord and satisfaction.

The defendant further contends that the court erred in not receiving competent evidence offered by it and in admitting improper evidence over its objection. In support of this it is said that the court erred in permitting Albert A. Stern to testify on behalf of the plaintiff that he entered into the contract for the sale of the Perflex testers, the ones involved in this suit, with the defendant company, through Henry W. Stern, because it was not

the defendant sent its check for \$200.00. There is
no complaint that plaintiff's bill was not paid.
But it is defendant's contention that since it had
the right to retain payment on account of plaintiff's claim
for \$200.00, this rendered the check void. The
defendant says the bill, however, was not paid, and
therefore, the acceptance of the check by plaintiff con-
stituted an accord and satisfaction. Of course, the payment
would be undisputed if there was a bona fide agreement
over the amount of the bill to settle the entire account. But
it is not the opinion of the court that there was
no dispute between the parties as to the amount of the bill
the defendant tendered the bill, because the evidence shows
without dispute that the first plaintiff knew nothing
about the bill account, was when it received the check.
And the undisputed evidence further is that the bill
company had no communication with the plaintiff company. And
in my view of the case in this court, we are of the opinion
that the finding of the trial judge in the bill was wrong
and no bona fide accord, in fact against the plaintiff would
of the evidence. In these circumstances, it is obvious
that there was no accord and satisfaction.

The defendant further contends that the court
erred in not receiving expert witness testimony by it
and in admitting expert witness testimony over the objection. In
support of this it is said that the court acted in receiving
expert testimony to testify on behalf of the plaintiff that
he cannot have the contract for the bill at the bank
because, and was involved in this suit, with the bank
and company, through Henry E. Scott, because it was not

shown that Henry W. Stern had authority to purchase the testers. There is no merit in this contention, because defendant accepted all of the Perfex testers and re-sold them to its customers and no complaint was at any time made, either on the trial of the case or in this court, that the defendant did not owe the amount plaintiff claimed for these testers, the only contention of the defendant being that it was entitled to its counter-claim on account of the Hydro account. Under these circumstances, it is obvious that the question of Henry W. Stern's authority to purchase the testers on behalf of the defendant was in no way involved. Nor was there error in the ruling of the learned trial judge in not permitting a witness for the defendant to testify what Henry W. Stern said to the witness concerning the testers in question, since the evidence discloses, without dispute, that Henry W. Stern had no connection with the plaintiff company.

Complaint is also made that the judgment is excessive in that plaintiff had not received its charter of incorporation until the 14th of April, 1921, and the evidence discloses that some of the testers for which plaintiff sued were delivered before that time; that plaintiff on the trial sought to show that he had invested his money for the making of the first testers and after plaintiff was incorporated, transferred his claim for those testers to the plaintiff corporation; that this evidence was admitted over defendant's objection; that the defendant then raised the point that since it appeared from the evidence plaintiff was suing for part of its claim as assignee of Albert A.

about that Henry A. Jones had authority to purchase the
property. There is no doubt in this respect, because
defendant received all of the better part of the proceeds
from the sale of the property and no one else was to be paid
there, either by the sale of the property or in any other
way. The defendant did not owe the money to anyone else
and there is no doubt, the only connection of the defendant
being that it was established as the defendant's sole
of the property. Under these circumstances, it is
obvious that the defendant of Henry A. Jones's authority
to purchase the property on behalf of the defendant was
in no way involved. But now there is the matter
of the defendant's claim. It is not necessary to discuss
for the defendant as to what Henry A. Jones said to
the witness concerning the property in question, since the
witness testified, without dispute, that Henry A. Jones
had no connection with the property in question.

Defendant is also aware that the judgment is
operative in that plaintiff had not received the property
of the defendant until the fall of 1911, and the
evidence discloses that none of the property for which plaintiff
sued was delivered before that time. It is also
on the trial sought to show that he had received the money
for the property of the first witness and other plaintiffs
and, consequently, substituted his claim for those persons
is the plaintiff's contention; that this witness was entitled
over defendant's objection, that the defendant then claimed
the point that also it appeared from the witness's testimony
was asked for part of the claim as assigned to Henry A.

Stern, it could not recover because there was no compliance with section 18 of the Practice Act. It is clear that the evidence of the witness Stern should not have been admitted over defendant's objection, but it is equally clear that the defendant is not entitled to receive any benefit on this account, because as already stated the amount plaintiff claimed in this suit was admitted by the defendant to be due and owing from it to the plaintiff. The only controversy being as to whether there was an accord and satisfaction, on account of the defendant, sending its check for \$216.03 as above stated and taking credit for its counter-claim on account of the Hydro account.

The judgment of the Circuit Court of Cook County is affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

• TOWNS • L. JAMES DR. L. A. RICHARD

371 - 30224

JOSEPH BRASHKE,

Appellee,

v.

CHICAGO CITY RAILWAY
COMPANY, ET AL,

Appellants.)

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 662

Opinion filed Jan. 20, 1926.

MR. JUSTICE O'CONNOR delivered the opinion
of the court.

This suit was brought by plaintiff to recover damages claimed to have been sustained for personal injuries occasioned by the negligence of the defendants in the operation of one of its street cars. There was a verdict and a judgment in plaintiff's favor for \$1500.00 and the defendants appeal.

Plaintiff's theory of the case as shown by the evidence, was that he was a passenger on one of defendants' eastbound street cars, operating in 51st street, Chicago; that he obtained a transfer from the conductor of that car, which stopped at State street; that he alighted from the car and crossed over in the southeast corner of State and 51st streets to take a northbound State street car and, while in the act of boarding the State street car, it was started and the conductor of the car endeavored to close the doors of the street car which raised the step and caused plaintiff to fall. His right foot was caught under the step and the bone fractured. On the other hand, the

2401 A. 602

Opinion filed Jan. 30, 1936.

THE COURT OF APPEALS IN THE DISTRICT OF COLUMBIA, in the case of the People of the District of Columbia vs. [Name], has affirmed the judgment of the Superior Court of the District of Columbia, rendered on the 12th day of December, 1935, in the case of the People of the District of Columbia vs. [Name], No. 10,000, in which the defendant was convicted of the crime of larceny of the first degree.

The facts of the case are as follows: The defendant, [Name], was arrested on the 12th day of December, 1935, at the residence of [Name], and taken to the District House of Detention. He was arraigned on the 14th day of December, 1935, and pleaded guilty to the crime of larceny of the first degree. The Superior Court of the District of Columbia, in its judgment, found the defendant guilty of the crime of larceny of the first degree, and sentenced him to the State Prison for a term of ten years.

The People of the District of Columbia, by their counsel, have appealed from the judgment of the Superior Court, and ask that the same be affirmed. The defendant, by his counsel, has asked that the judgment be reversed, and that he be acquitted.

The Court of Appeals, in its opinion, has affirmed the judgment of the Superior Court. The Court finds that the evidence in the case is sufficient to support the conviction of the defendant of the crime of larceny of the first degree. The Court also finds that the sentence imposed by the Superior Court is proper.

Therefore, the Court of Appeals affirms the judgment of the Superior Court, and the defendant is sentenced to the State Prison for a term of ten years.

defendants' theory was that the State street car stopped to receive and discharge passengers when it reached a point near the south side of the intersection at 51st street; that the car then started up after passengers had all boarded the car; that plaintiff ran around the front end of the northbound State street car and attempted to board it while it was moving and that the conductor did not raise the steps of the car at all.

At the close of the plaintiff's case and at the close of all the evidence, the defendants moved for a directed verdict which motion was overruled and it is contended this was error. It is further contended that in any event, the finding of the jury in favor of the plaintiff is against the manifest weight of the evidence and the judgment based thereon, should be reversed. The case went to the jury on the second and third counts of the declaration. The second count alleged that the defendants caused the car to be suddenly started and the step closed as a result of which plaintiff was thrown and injured while in the act of boarding the car. The third count charged that the defendants negligently, suffered and permitted the step of the car to remain in a slippery, wet and icy condition, and that the defendants negligently started the car and caused the step to be folded while plaintiff was in the act of boarding the car.

For the plaintiff, Janoda Buckner, testified that at the time in question she was waiting at the southeast corner of the intersection of the two streets to board the northbound State street car; that there were other persons

ahead of her and plaintiff was standing immediately behind her for the same purpose; that after those persons ahead of her and the witness boarded the car, it was immediately started and that she saw the conductor attempt to close the doors of the car; that she heard plaintiff scream and saw him fall on the steps of the car.

Plaintiff testified in his own behalf that he had been a passenger on an eastbound car in 51st street and obtained a transfer from the conductor of that car to proceed north on the State street car; that he alighted from the 51st street car and walked over to the southeast corner of the intersection as the State street car was approaching from the south; that he stood there waiting to board the car, immediately behind the witness Buckner; that she got on the car and he started to board it after her; that the car was then standing still; that he took hold of the two upright handles and had his left foot on the south half of the step, the place for passengers to enter the car; that there was a space between the north end of this step and the step which was used by persons to alight from the car; that the step was icy; that the car was started before he had time to board it, and that the conductor attempted to raise the steps to close the doors; that his right foot slipped into the space between the two steps and he was thrown and injured.

For the defendant, James J. O'Brien, testified that he was on the back platform of the State street car at the time in question; that five or six people, including himself, boarded

about of her and himself was standing immediately
behind her for the same purpose; that after these two
men stood at her and the witness bounded the car, it
was immediately started and that the witness continued
attempt to raise the cover of the car; that the driver
immediately turned and saw his fall on the steps of the
car.

Witness testified in his own behalf that he
had been a passenger on an automobile car in that street
and obtained a transfer from the conductor at that car
to proceed north on the State street car; that he alighted
from the first street car and walked over to the transfer
transfer of the intersection to the State street car and
proceeding from the car; that he stood there waiting
to board the car, immediately behind the witness however;
that the car was on the car and he started to board it when
he saw that the car was then standing still; that he took
hold of the two support handles and his left foot on
the south half of the step, the driver for momentary to enter
the car; that there was a space between the north end of
the step and the step which was used by persons to alight
from the car; that the step was low; that the car was started
before he had time to board it, and that the conductor
attempted to raise the steps to clear the car; that his
right foot slipped into the space between the two steps and
he was thrown and injured.

For the defendant, James L. O'Brien, testified that
he was on the south half of the State street car at the time
in question; that five or six people, including himself, boarded

the car at that point; that after the car started up and had traveled about forty feet, he heard a "thud hit the car. I looked around and a young fellow was lying on the step; just lying on, holding on to the handle, with his feet towards the south, holding on to the grab handle, lying down."; that another passenger who was on the back platform and the conductor went to the young man's assistance and got him up on the platform of the car; that he did not see the young man prior to the time he heard the thud; that he did not particularly notice whether the door of the car was closed at that time. On cross-examination he testified that he had come on the 51st street car and that when he boarded the State street car there were one or two persons back of him who also wanted to board the car; that he was prepared to hand his transfer to the conductor when he heard the thud as of some one striking the steps of the car; that he did not remember any movement made by the conductor to close the doors of the car. He further testified that as he remembered, "Both doors of the car were wide open, but I haven't got it clear. It is a long time ago."

Peter Clarke, conductor of the State street car, testified that six or seven passengers boarded his car at the time in question; that after all had gotten on, he gave a signal to the motorman to go ahead and at that time no one was getting on or off; that he did not close the doors; that he was not operating the doors of the street car on that date; that he had been a conductor on the cars for three or four years and had not been in the habit of closing

the fact of that violent death which was the result of the
had prevailed about forty years, he heard a sound like the
one. I looked around and a young fellow was lying on the
floor; he was lying on his back, his head on the floor, and his
feet towards the wall, his hands on his head.
lying down; that was the position in which he was on the floor.
platform and the woman's hand on the young man's head and
and put him on the platform at the top; that he did not
see the young man fall in the time he was in the hands; that
he did not previously notice whether the door of the car
was closed or not. He was standing in the car
and he had come to the first stop and was then he
noticed the fact that the door was not closed
and he was then standing on the car; that he was
prepared to hand his baggage to the porter when he heard
the sound of some one shouting the name of the car; that
he did not remember any conversation with the porter to
after the door of the car. He further testified that he did
remember, from doors of the car were also open and I
don't get it right. It is a long time ago.

JOHN CLARK, witness at the same place and
testified that he was present when the car was
at the time in question; that after all had gotten on, he gave
a signal to the porter to go ahead and at that time he
was sitting on the car; that he did not close the door
that he was not operating the door of the car at the
that time; that he had seen a conversation at the time the
door of the car was not closed in the hands of the porter.

the doors after the passengers had alighted from the car; that he gave his signal to the motorman by pulling the bell; that after the car had started up, he heard a heavy sound hitting the step; that the car was then about midway in the intersection; that he saw the young man down on the step, holding on to the grab-handle; that he helped him up on the platform and stopped the car and that at no time did he raise or lower the steps or attempt to close the doors of the car.

There is other evidence tending to show that there had been slight snow flurries in the morning and other evidence to show that the day was bright and clear and that it was not cold or wet. This is the substance of the evidence in the record as to how the accident occurred.

The motorman testified that after stopping at the south side of 51st street, he got the signal to go ahead and started the car; that when the car had reached a point about the south or eastbound track in 51st street, a young man ran in front of the State street car from the west; that the car kept moving until he got some distance north of 51st street when he received three bells to stop, which he did; that he went back and found a young man sitting on the back platform and called the ambulance to take him to a hospital. He testified he could not swear that it was the same man that was injured that he saw running in front of the car. In rebuttal plaintiff testified that he did not run in front of the State street car; that he walked over to the

proper place to board the car, while it was approaching him from the south.

We think that all reasonable minds would not reach the conclusion that the plaintiff was guilty of contributory negligence or that the defendant was free from negligence. In these circumstances, these questions were properly submitted to the jury. Libby, McNeill & Libby, v. Cook, 222 Ill. 206. And upon a careful consideration of all the evidence in the record, we are also of the opinion that we would not be warranted in holding that the verdict of the jury to the effect that plaintiff was free from negligence and the defendant guilty of negligence is against the manifest weight of the evidence. The jury saw and heard the witnesses testify, as did the trial judge. The jury found in favor of the plaintiff. Their finding was affirmed by the trial judge and after a careful consideration of the evidence, we cannot say that the action of the judge and jury, who were in a much better position to determine the truth of the matter than a court of review, is against the manifest weight of the evidence. The jury were specifically advised, at the request of the defendant, in two instructions as to the negligence charged in the two counts of the declaration. No complaint is made that the instructions given or refused were incorrect. There is no complaint as to the admission or exclusion of evidence, nor as to the amount of the verdict. We think the record is free from any serious error and the judgment of the Superior Court of Cook County will, therefore, be affirmed.

AFFIRMED.

THOMSON, P.J. AND TAYLOR, J. CONCUR.

[illegible]

There are no other subjects to be discussed.

... ..

State University of New York at Albany

[illegible]

2-17. The following are the names of the persons who were present at the meeting held on 2-17-68.

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1971年10月1日，中国科学院图书馆，中国科学院图书馆，中国科学院图书馆

Don't let me hear any more of this. I'm not a doctor, I'm a man.

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349 - 30102

THE FAIRBANKS COMPANY,
a corporation,

Appellant,

v.

UNITED STATES FIDELITY AND
GUARANTY CO., a corporation,

Appellee.

56040
240 I.A. 662
APPEAL FROM

SUPERIOR COURT,
COOK COUNTY.

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion of the court.

Substantially the same matters that are involved in this appeal were before this court once before - The Fairbanks Company v. United States Fidelity and Guaranty Company, General Number 28671 (opinion filed March 11, 1924) - and in our judgment that case is decisive of this.

The issue in the former case, which was begun in the Circuit Court, was precipitated by an amended bill of complaint and a general demurrer. At a hearing before the Chancellor, the demurrer was sustained and a decree entered dismissing the bill for want of equity. That decree was afterwards, on March 11, 1924, affirmed by this court.

Subsequently, on August 30, 1924, the complainant began the present suit in the Superior Court. The issue in this case was made up as the result of an amended bill of complaint filed on December 16, 1924, and a general demurrer. The demurrer was sustained and a decree entered that the bill

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Opinion filed Jan. 30, 1936.

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of complaint be dismissed for want of equity. This appeal is from that decree.

Being of the opinion, as said above, that the matters involved in the present appeal were adjudicated in the former case, it becomes necessary, in order to demonstrate the justice of that conclusion, to compare the allegations of the amended bill of complaint in the former case with those in the present case. In the opinion of the court in the former case the substance of the bill is recited as follows:

"In said amended bill, complainant, a New Jersey corporation - licensed to do business in Illinois, alleges in substance that 'prior to September 1, 1931, the exact date being unknown to your orator,' defendant, for a valuable consideration, executed and delivered to complainant its bond, whereby it agreed to reimburse complainant to the extent of \$10,000 for any money or property that one Timmons, its employee, would embezzle or otherwise convert to his own use while in its employ; that complainant does not know the exact terms of the bond as the same is now in defendant's possession; that Timmons, during the years 1930 and 1931, stole divers sums of money and property from it; that during an examination of complainant's books in April, 1931, by a certified public accountant, the latter informed complainant that Timmons had stolen various sums aggregating \$2,724.81; that complainant relied on the accountant's report and believed it was correct and complete, and, under that belief, notified defendant, in August, 1931, of said defalcations 'to the extent of said foregoing sum only,' and delivered to defendant a true copy of the itemized list of said defalcations prepared by said accountant; that, thereupon, defendant, relying upon said list and believing it to be correct and complete, on or about September 1, 1931, paid to complainant said sum, and complainant delivered up the bond to defendant, who 'thereupon cancelled it; that defendant saw the records that contained all the embezzlements, but 'overlooked undisclosed and additional defalcations that existed at the time,' and 'agreed with your orator that the total embezzlement of Timmons amounted to \$2,724.81;' that on or about April 1, 1932, a general audit of complainant's books was 'commenced,' and complainant learned that both it and defendant were 'mutually mistaken' in deeming said sum to be the total amount that Timmons

had stolen; that complainant, immediately upon ascertaining said 'mutual mistake,' notified defendant thereof, and, during 'such additional examination,' on June 7, 1932, further notified defendant that it (complainant) 'rescinded the release settlement' of September 1, 1931, and at the same time tendered back to defendant the sum of \$2,724.81, and demanded said bond, but defendant failed to deliver it or to inform complainant of the terms thereof; and that said additional examination was completed about July 1, 1932, and disclosed that Timmons had stolen, in addition to the \$2,724.81, diverse sums that 'had been overlooked through the miscalculation and mutual mistake' of complainant and defendant at the time of the settlement of September 1, 1931, as follows:

| | |
|--|------------|
| 'July, 1930, Check of Continental Supply Co., | |
| St. Louis, Mo..... | \$1,142.20 |
| Sept., 1930, Check of G. F. O'Malley, Kansas | |
| City, Mo..... | 3,859.75 |
| 1930, Check of Morris & Co., Chicago, Ill..... | 363. |
| 1920-1931 Checks unknown as to identity, but | |
| specifically admitted by Timmons to | |
| have been converted by him..... | 550. |
| 1920 -1931 Checks received and possibly diverted | |
| by Timmons..... | 25,638.17. |

That on July 7, 1932, complainant notified defendant by a sworn statement of said additional defalcations and 'demanded that the defendant rescind said settlement of September 1, 1931, because of said mutual mistake of fact,' and reimburse complainant for said additional money so stolen, both of which demands defendant refused.

The prayer of the bill is that the settlement of September 1, 1931, be rescinded and held to be binding only to the extent of \$2,724.81; that the original bond be deemed to be in full force and effect; and that complainant may obtain a money decree against defendant, to the extent of the bond, for the entire amount of money so stolen by Timmons."

The allegations in the amended bill of complaint in the present case cover twenty-five pages of the record, and being so voluminous it is, of course, impracticable even to set forth an intelligible summary of its contents in this opinion.

Counsel for the complainant, however, in his brief'

states that the facts recited in the amended bill of complaint in the present case that were not contained in the amended bill of complaint in the Circuit Court case, are as follows:

- (1) The general release was under seal;
- (2) The later discovered embezzlements were successfully concealed by the embezzler because they were made possible by reason of omitted entries;
- (3) The embezzler had sole control of approximately 1,000 separate accounts, involving thousands of entries;
- (4) The manner in which the embezzler first was suspected and his successive disclosures;
- (5) The fraudulent and clever concealment of the embezzler of all his peculations so that the complete details thereof could not be discovered or ascertained by an audit;
- (6) The further fraudulent conduct of the embezzler during an audit by failing to make disclosures that would have shown all his embezzlements at the time;
- (7) The knowledge of the defendant that the embezzler was present during the audit and the retention by the defendant of the general release under seal after it knew of this fraud;
- (8) The details of the later discovered embezzlements and the manner in which the embezzler skillfully and successfully escaped detection thereof;
- (9) The indictment of the embezzler; and
- (10) The reason why a copy of the insurance bond or contract is not set forth in the bill of complaint;"

The prayer for relief in the bill of complaint in the instant case is for a decree finding that the complainant is entitled to a rescission and cancellation of

During the summer of 1964, the following information was obtained from the records of the Federal Bureau of Investigation, Washington, D. C.:

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THE UNIVERSITY OF CHICAGO LIBRARY (1)

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10. In the event of a change of ownership of the property, the owner shall be responsible for the payment of the taxes and charges.

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1. The first part of the document is a list of names and their corresponding dates. The names are: "John Doe", "Jane Smith", "Bob Johnson", "Alice Brown", "Charlie White", "David Green", "Eve Black", "Frank Gray", "Grace Hall", "Henry King", "Ivy Lee", "Jack Miller", "Karen Wilson", "Leo Young", "Mia Fox", "Noah Evans", "Olivia Reed", "Peter Scott", "Quinn Turner", "Samuel King", "Tina Baker", "Uma Adams", "Victor Clark", "Wendy Lewis", "Xavier Hall", "Yara King", "Zoe Lee". The dates are: "1990-01-01", "1990-02-01", "1990-03-01", "1990-04-01", "1990-05-01", "1990-06-01", "1990-07-01", "1990-08-01", "1990-09-01", "1990-10-01", "1990-11-01", "1990-12-01", "1991-01-01", "1991-02-01", "1991-03-01", "1991-04-01", "1991-05-01", "1991-06-01", "1991-07-01", "1991-08-01", "1991-09-01", "1991-10-01", "1991-11-01", "1991-12-01", "1992-01-01", "1992-02-01", "1992-03-01", "1992-04-01", "1992-05-01", "1992-06-01", "1992-07-01", "1992-08-01", "1992-09-01", "1992-10-01", "1992-11-01", "1992-12-01".

TO THE HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES
OF THE STATE OF NEW YORK:
IN SENATE,
JANUARY 10, 1906.

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the receipt or endorsement upon the policy of insurance; that the complainant is entitled to a discovery concerning the policy of insurance; that the complainant be entitled to surcharge and falsify the account and items of account and claim for loss as heretofore presented to the defendant; that the account be restated, and that the amount be found that is due to the complainant; that the complainant be granted the right to proceed before a jury in this cause, and secure a verdict for the additional amount so adjudged to be due from the insurer by reason of the newly discovered defalcations, or that the complainant be granted a decree enjoining the defendant from pleading in any court of law the several matters of defense set forth in its bill of complaint.

In the opinion of this court in the former case, above referred to, this court said: "The relief prayed for is predicated on the theory of the mutual mistake of fact at the time the alleged settlement of September 1, 1931, was made, and the bond surrendered and cancelled."

This court, also, said in that case, "the bill does not allege facts sufficiently showing that said settlement of September 1, 1931, was made under such 'mutual mistake' of fact as would entitle complainant to rescind said settlement and have restored to it the original bond which was then surrendered and cancelled. (Duff v. Hutchinson, 10 N.Y. Supp. 887, 889; Brooks v. Hall, 36 Kans. 697, 699.)

"It rather appears from the bill, that the mistake

was alone complainant's, or that ^{of} the accountant employed by it, in carelessly checking up the defalcations of Timmons prior to the settlement. And it is the law that relief will not be granted in equity on the ground of the mistake of fact to a party where that mistake was induced or caused by his own carelessness or negligence. (13 Corpus Juris, p. 353, Sec 51; Dammann v. Schulting, 75 N.Y., 55, 64; Steineyer v. Schrosspel, 226 Ill. 9, 13.)"

We think that a careful analysis of the present bill demonstrates that the relief prayed for is sought, legally considered, solely on the ground of a mutual mistake of fact, which is the same relief prayed for in the former case. Then, too, the record shows that the parties, the subject-matter, and the general purpose of both bills are identical. The very items making up the additional defalcations are, with one immaterial exception, the same. Also, both bills show that the alleged additional defalcations were all known to the complainant, either as the result of an examination of the books, or by the confession of Timmons himself, before July 1, 1922, that is, before the complainant filed its original bill in the Circuit Court on July 24, 1922. And, further, every material statement of fact set up in the present bill of complaint was known to it, or available, at the time of instituting the former action.

In Tilley v. Bridges, 105 Ill. 336, the court, citing with approval Hanna v. Read, 102 Ill. 396, used the following language:

"Where some specific fact or question has been adjudicated and determined in a former suit, and the same fact or question is again put in issue on a subsequent suit between the same parties, its determination in the former suit, if properly presented and relied upon, will be held conclusive upon the parties in the latter suit, without regard to whether the cause of action is the same in both suits or not. This species of estoppel is known to the law as an estoppel by verdict, and is equally available to a plaintiff in support of his action, when the circumstances warrant it, as when offered by defendant as matter of defense."

In the Tilley case, the court said:

"But the fact that different relief is claimed under the two bills can make no difference. The allegations in each bill are substantially alike, and all the relief claimed under the present bill could as well have been granted under the former bill."

In Mohannah v. Mohannah, 292 Ill. 133, the court held, citing the Tilley case, that when some specific fact has been decided in a former suit and is again put in issue, its determination in the former suit is conclusive, whether the cause of action is the same in both suits or not. And then, in Chicago Terminal R. R. Co. v. Barrett, 252 Ill. 86, Mr. Justice Cartwright said:

"When a court having jurisdiction decides a controversy, the question involved is settled forever between the parties to the suit and persons in privity with them, and neither can again litigate with the other any fact or question actually or directly in issue which was passed upon and determined by the court. Hanna v. Reed, 103 Ill. 598; Tilley v. Bridges, 105 id. 336; Wright v. Griffey, 147 id. 498; Union Pacific Railway Co. v. Chicago, Rock Island and Pacific Railway Co., 164 id. 88; Deanster v. Lanningh, 244 id. 403; People v. Chicago, Burlington and Quincy Railroad Co., 247 id. 340."

Waller v. River Forest, 259 Ill. 223, holds that even though a decree in a former case is erroneous, it is

binding upon the parties "to that proceeding until it is reversed in a direct proceeding." Citing Young v. Lorain, 11 Ill. 624; Bradish v. Grant, 119 id. 606; Chicago Terminal Railroad Co. v. Barrett, 253 id. 86; Bielbeck v. Grothman, 248 id. 435; Denk v. Fiel, 249 id. 424.

In Bright v. Griffer, 147 Ill. 496, the court said,

"Where the former adjudication is relied upon as an absolute bar to a subsequent action, it must be shown that the cause of action and thing to be recovered are the same in both proceedings. While the particular form of action may not be important, there must be, as is generally laid down, as between the two actions, identity of parties, of subject-matter and of cause of action, to constitute the first a bar to the second. Where, however, some controlling fact or question material to the determination of both of the causes has been adjudicated in the former suit by a court of competent jurisdiction and the same fact or question is again at issue between the same parties, its adjudication in the first will, if properly presented, be conclusive of the same question in the later suit, irrespective of whether the cause of action is the same in both suits or not."

In Knowlton v. Hanburg, 117 Ill. 471, the court quoted with approval the following language from Story's Equity Jurisprudence, Sec. 1523.

"A former decree in a suit in equity between the same parties and for the same subject-matter, is also a good defense in equity, even although it be a decree merely dismissing the bill, if the dismissal is not expressed to be without prejudice."

In stating the reason for that principle, the court said in the Knowlton case,

"The law very properly gives every man a day in court, but litigation ought not to be encouraged, and when a matter has once been litigated and decided by a court of competent jurisdiction, that matter cannot again be brought into litigation between the same parties, but the judgment or decree first rendered will be held conclusive between the parties."

For the complainant, the following cases are cited in opposition: Kenealy v. Glos, 241 Ill. 15; Gage v. Ewing, 114 Ill. 15; Farwell v. Great Western, 161 Ill. 532. None of these cases, however, holds to the contrary. In the Kenealy case, which was a suit in equity to cancel a tax deed, the court held that a decree in a former suit dismissing the bill for want of equity, was not res adjudicata, owing to the fact that it was not alleged in the original bill that the plaintiff was either in possession or had title to the property. In distinguishing that case from the Tilley case (supra), the court said:

"An adjudication that appellee had no such title or possession as was required to maintain the bill, is not a determination of that fact that will estop appellee from setting up a title and possession subsequently acquired, even though in other respects the averments of the bills are substantially the same."

In the instant case, however, as we have already said, the same situation of facts existed when the first bill was filed as when the second bill was filed; and, to use apt language of the Tilley case, "All the relief claimed in the present bill could as well have been granted under the former bill." We do not find that any of the cases cited for the complainant holds contrary to the doctrine of the Tilley case.

In In re Northwestern University, 206 Ill. 64, the court said:

"As said in Rogers v. Higgins, 57 Ill. 244, a controversy cannot be reopened to hear additional reasons which before existed and were within the knowledge of the party, in support of the same cause of action. The principle of

res adjudicata embraces not only what actually was determined in the former case, but also extends to any other matter properly involved and which might have been raised and determined in it."

And in that case the court quoted, with approval, from Beloit v. Morgan, 7 Wall. 619, the following:

"The principle of res adjudicata reaches further. It extends not only to the questions of fact and of law which were decided in the former suit, but also to the grounds of recovery or defense which might have been but were not presented."

We are not unmindful of the fact that as a result of this decision the insured will not get to the full what it actually contracted for, and that the insurer may escape from a part of its normal contractual obligations, but the law of res adjudicata, which is said to be a rule of justice, based upon public policy and the principle that one should not be twice vexed for the same cause, is fixed, and is as potent in a court of equity as in one of law. Accordingly, the matters here involved having been settled by the regular processes of the courts in the former suit, it follows that they are not now a legitimate and available subject for further consideration and adjudication.

Bearing in mind, therefore, the issue in the former case, we are constrained to hold that although the pleader in the present case has undertaken to use similar facts, with immaterial additions, and has varied the prayer for relief, the two proceedings, in the eyes of the law, seek the same result, and are, in substance, as matters of litigation, identical; from which it follows that the

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principle of res adjudicata applies, and as a consequence,
the decree of the Chancellor must be affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

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298 - 30151

RALPH H. BEESLEY, doing business
as Ralph H. Beesley & Company,

Appellant,

v.

ROY C. BUNCH,

Appellee,

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 663

Opinion filed Jan. 30, 1926.

MR. JUSTICE TAYLOR delivered the opinion
of the court.

On September 2, 1924, a judgment by confession on a promissory note was entered in the Municipal court for \$340.00, in favor of the plaintiff, Ralph H. Beesley, doing business as Ralph H. Beesley & Co., against the defendant, Roy C. Bunch. Upon a motion to vacate, supported by an affidavit, the judgment was vacated, and it was ordered that the affidavit stand as an affidavit of merits. The affidavit set up that the note sued upon was given to the plaintiff as earnest money on a real estate sales contract signed by the defendant as purchaser and that before the contract was signed by the owner of the property, the defendant had orally withdrawn his offer to purchase. There was a trial before the court, without a jury, and a judgment for the defendant.

The defendant testified that he was a yard-master for the Chicago & Northwestern Railroad; that he got acquainted with the plaintiff through an advertisement of a

piece of property the plaintiff had for sale; that his wife went to see the property; that she saw one of the plaintiff's agents; that on the day he, the defendant, signed the contract and note, he saw one Paupa, of the plaintiff's office; that Paupa said, "If this deal does not go through, we will return the papers," and that he, Paupa, would let him, the defendant, know that night; that at the time the contract was drawn up, he told Paupa he would give \$7750.00; that Paupa said the price was \$8,100.00; that he, also, said, "I don't think they will take that but nevertheless, I will go and see what I can do with the owners and will let you know tonight;" that Paupa did not let him know that night; that the following morning he, the defendant, went to the plaintiff's office and asked Paupa what success he had had; that Paupa said, none at all, that Paupa, further, said, "I stayed until 10:30 and tried to talk him into it, but he wouldn't take it;" that he said the house cost him more than that, and he left him; that he, the defendant said to Paupa, "Call the deal off;" that Paupa said, "It is a good place, a wonderful buy;" that he, the defendant, said he did not care for it and would just as soon not have it, and walked out. He further testified that the next morning he went to Beesley's office and talked with Breda, also one of plaintiff's agents; that Breda said that as he, the defendant, had signed the note he must pay it; that he, the witness said, "I came in here yesterday morning and told Mr. Paupa to call the deal off, I didn't want it;" that Breda said, "I know, ten minutes after you was here they came in and signed it;" that he, the witness, said, "Why did you let him sign it," and Breda said, "Well, there was no restriction to us. We didn't

[illegible]

have to deliver to you until thirty, sixty days, any time;" that he asked Breda to let him see the contract and note; that Breda went and looked for it and then said, "It is not in the office now, somebody has got it out;" that the note was evidence of the earnest money; that the note was the only consideration he gave.

The defendant rested at the close of the defendant's, Bunch's, testimony. The plaintiff then called Paupa as a witness. He testified that he was an employee of the plaintiff; that he met the defendant and his wife on August 10, 1924; that on August 13, the defendant came to the plaintiff's office and executed the contract and the note; that the evening of that day, after the contract and the note had been signed, he, the witness, went to the home of the seller, Pemoller; that he was not in, but Mrs. Pemoller signed the contract and the next morning, about nine o'clock, the defendant called on the witness and asked, "How about the building?" that he, the witness, answered, "Mrs. Pemoller signed up but I couldn't get him to sign up because he didn't get home until late, and I didn't want to leave the contract there, and I took her signature on that contract and went back there, and I says, 'I am going over tonight and he will sign it,' and he went out of the office and that was all there was to it;" that the defendant did not tell him that morning to call the deal off; that he did not tell the defendant that Mr. Pemoller would not sign the contract; that on the evening of August 14, he took the contract to Pemoller's house, and Mr. Pemoller signed it, and at no time did the defendant tell him to call the deal off.

have to deliver to the United States, only five, and that
that he asked him to let him see the contract and when
that time was and looked for it and then said, "It is
not in the office now, somebody has got it out; when the
there was evidence of the contract; that was when the
the only investigation he was.

The following report of the office of the Department,
March 1, 1900, is submitted. The following is a copy of the
report. He testified that he was an employee of the office
and that he was not an auditor and his title on August 10,
1900, was on August 10, the following was to the office
that the office had received the contract and the fact that
the contract of that day, when the contract and the fact
was being signed, he, the witness, wrote the rest of the
contract, because; that he was not in, but that he
signed the contract and the fact that, about nine o'clock,
the following called on the witness and said, "Now about the
contract, that is, the witness, answered, "That, because
signed up but I couldn't get it to sign because he didn't
get here until later, and I didn't want to leave the contract
there, and I took out a copy of the contract and went back
there, and I said, "I am going away tonight and he will sign
it," and he was out of the office and that was all that
was to it; that the contract did not tell him that morning
to sign the contract; that he did not tell the witness
that the contract was not with the contract; that on the
evening of August 20, he took the contract to the office
room, and at 7 o'clock signed it, and on the day the
contract was told him to sign the contract.

Breda, the sales manager of the plaintiff, called on behalf of the plaintiff, testified that on August 18 or 19, he had a conversation with the defendant at the plaintiff's office, and that on that occasion the defendant said, "You can call the deal off;" that he, the witness, asked him about the matter, and he, the defendant, said that he had bought another building; that he, the witness, said, "Well, you can't call this deal off, the entire deal, or contract is signed up by the seller, you will have to go through with it or forfeit the \$300 note that you have put up;" that the defendant said, "No, I would not do that," and asked for the note; that he, the witness, then went and asked the cashier for the note; that the cashier said she didn't have it, that Mr. Paupa, who was out of the office at that time, had it, and he so told the defendant.

The note and contract were both offered in evidence; the note was dated August 13, 1924, and was for the sum of \$300.00, payable on or before two days after date, to the order of Ralph H. Beasley & Co. at its office. It was signed, Roy C. Bunch. The contract was dated August 13, 1924, and signed by Roy C. Bunch, John Pemoller and Elsie Pemoller. The contract was to the effect that Roy C. Bunch agreed to purchase and John and Elsie Pemoller agreed to sell, for \$7750.00 certain real estate at 5103 Dakin street, Chicago, Illinois. The contract recited that the purchaser had paid \$300 as earnest money to be applied on the purchase when consummated, and agreed to pay \$2700 within five days after the title had been found to be good. It also provided for

...the same manner of the ...
...of the ...
...in or in, he had a conversation with the ...
...of the ...
...said: "You can call the ..."
...the ...
...said that he had ...
...the witness, ...
...entire deal, ...
...will have to go through with it ...
...that you have ...
...and asked for the ...
...that would ...
...said ...
...out of the office ...
...detachment.

The ... and contract were ...
...the ... dated August 12, 1904, ...
...1904, payable on or before two ...
...order of Ralph ...
...signed, Roy C. ...
...and signed by Roy C. ...
...The contract was on the effect that Roy C. ...
...purchase and ...
...\$7500.00 ...
...1 ...
...\$500 ...
...received, and ...
...the title had been found to be good. It also provided for

the assumption of a certain mortgage of \$2800.

The contract contained the following:

"Should said purchaser fail to perform said contract promptly on his part, at the time and in the manner herein specified, the earnest money paid as above, shall, at the option of the vendor, be retained by the vendor as liquidated damages, and this contract shall thereupon become and be null and void. * * * This contract and the said earnest money shall be held by Ralph Beesley & Co. for the mutual benefit of the parties concerned, * * * and it shall be the duty of said Ralph H. Beesley & Co. in case said earnest money be retained as herein provided, to apply the same, first, to the payment of any expenses incurred for the vendor, by his agent in said matter; and second, to the payment to vendor's broker of a commission * * * for his services in procuring this contract, rendering the over-plus to the vendor."

The trial judge held, as a proposition of fact, that according to the evidence, the sellers of the property had accepted the offer of the defendant, Bunch, before any notice was received by the agent of the seller that the defendant, Bunch, desired to call the deal off, and held, as a matter of law, that the party holding the legal title to a bill or note might sue on it, although he was merely an agent and liable to account to another for the proceeds of the recovery, but refused to hold that the legal title to the note in question was in the payee, Ralph H. Beesley, doing business as Ralph H. Beesley & Company, and accordingly, entered judgment for the defendant.

First. The question arises whether the finding of the trial judge that the sellers of the property had

accepted the offer of the defendant before it was withdrawn, is clearly against the manifest weight of the evidence. That question, we are constrained to answer in the negative. The testimony was conflicting, that of the defendant, Bunch, being in conflict with the testimony of Paupa and Breda.

Paupa testified, positively, that, on the evening of August 13, the day on which the defendant signed the contract and the note, he went to the home of the seller, Pemoller, and that Mrs. Pemoller, her husband being away at the time, signed the contract, and that the next morning, the defendant called and asked him, the witness, "How about the building," and he, the witness, told him that Mrs. Pemoller had signed it, but that he was not able to get Pemoller to sign, as he didn't get home until late, and as he didn't want to leave the contract there, he had her sign it, and that he was going back again that evening, and that Pemoller would then sign it.

He further testified that the defendant did not tell him that morning to call the deal off; that on the evening of August 14, he, Paupa took the contract to Pemoller's house and he signed it; and at no time did the defendant tell him to call the deal off. The purport of Paupa's evidence that the defendant did not withdraw his offer before it was accepted, is somewhat corroborated by the testimony of Breda, the sales manager.

Obviously, the answer to the question whether the defendant withdrew his offer in apt time, depends

upon the credibility of the defendant, on the one hand, and Paupa and Breda on the other. And as to that subject, the trial judge was in a very much better position than we are. He had the witnesses before him, and was far better able in such a case as this, to pass judgment on the proper credit to be given to each of the witnesses than we are.

It follows, therefore, considering what the record shows on the subject of the alleged withdrawal of the offer, that the finding of the trial judge that the sellers of the property had accepted the offer of the defendant before any notice was received by the agent of the sellers that the defendant desired to call the deal off, is not against the manifest weight of the evidence.

Second. The question then remains, was the plaintiff, Ralph H. Beesley & Co., entitled to sue upon the note in question. That must be answered in the affirmative. The note was signed by the defendant, Roy C. Bunch and was payable to the order of Ralph H. Beesley & Co., at the office of Ralph H. Beesley & Co. Then, too, the contract of purchase provided that the earnest money should be retained by Ralph H. Beesley & Co., and that the proceeds should be paid out in a certain way, "first, to the payment of any expenses incurred for the vendor by his agent in said matter; and second, to the payment to vendor's broker of a commission * * * for his services in procuring this contract, and rendering the over-plus to the vendor."

upon the credibility of the defendant, on the one hand, and
Kearney and others on the other. And as to that subject, the
trial judge was in a very good position to judge of the
credibility of the witnesses, and was for that reason
in a better position to pass judgment on the proper weight
to be given to each of the witnesses than we are.

It follows, therefore, considering what the record
shows as the subject of the alleged statement of the other,
that the finding of the trial judge is the basis of the
verdict, and we accept the fact of the statement before us
as being true, and we find that the statement was made by
the defendant to all the jury, as we find the same
fact weight of the evidence.

Second. The question then remains, was the
statement, which M. Kearney & Co., applied to the
note in question. That must be answered in the
affirmative. The note was signed by the defendant, for G.
Kearney and was payable to the order of Ralph H. Kearney &
Co., at the office of Ralph H. Kearney & Co., New York.
The amount of purchase provided that the amount was
received by Ralph H. Kearney & Co., and that the
amount in fact was paid out in a certain way, first, to
the payment of any expenses incurred for the vendor up to
the date of sale; and second, to the payment to vendor's
profit of a commission " " for his services in procuring
the contract, and making the contract to the vendor."

The fact that it might turn out ultimately, as between the plaintiff and the seller that part of the proceeds of the note would have to be paid over to the seller, in no way affects the undoubted right of the plaintiff, the payee, to sue the defendant, the maker of the note. Trude v. Fulton, 207 Ill. App. 216.

This subject, generally, was considered by this court in Orner v. Liner, General Number 29830 (opinion filed October 28, 1925), but in that case the affidavit of merits, which had been stricken, recited that the vendor refused to carry out the sale, and we held that the facts as recited showed that no right of action arose in the agent until after the consummation of the sale. The instant case is distinguishable from the Orner case in that here the contention of the defendant that there never was a contract; that he withdrew his offer before a contract was made, was found to be untenable.

Inasmuch, therefore, as a valid and binding contract was actually made, and as the defendant had given the note in question as part of the consideration due from him under the contract, and as that note was payable directly to the plaintiff, it follows that the plaintiff in this proceeding is entitled to judgment against the defendant for the amount of the note and interest.

The judgment, therefore, will be reversed and judgment entered here in favor of the plaintiff and against the defendant for the sum of \$340.00.

REVERSED AND JUDGMENT HERE.
THOMSON, P.J. AND O'CONNOR, J. CONCUR.

Now that it is clear that the plaintiff is not entitled to the relief he seeks, it is unnecessary to consider the question of the proper measure of damages. The plaintiff is not entitled to the relief he seeks, and the measure of damages is not a question in this case.

This case, therefore, is decided in favor of the defendant. The plaintiff is not entitled to the relief he seeks, and the measure of damages is not a question in this case. The defendant is entitled to the relief he seeks, and the measure of damages is not a question in this case.

Accordingly, the court grants the motion of the defendant for summary judgment. The plaintiff is not entitled to the relief he seeks, and the measure of damages is not a question in this case.

The judgment of the court is affirmed. The plaintiff is not entitled to the relief he seeks, and the measure of damages is not a question in this case.

341 - 30194

AARON EGLITSKY,

Appellee,

v.

RUBIN BALLIS,

Appellant.)

5506
240 I.A. 663
APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion of the court.

This is an appeal by the defendant Rubin Ballis, from a judgment in the Superior Court in favor of the plaintiff, Aaron Eglitsky, in an action for trespass vi et armis. The verdict of the jury was for \$1100.00, but, upon a remittitur of \$500.00, and a judgment was entered in the sum of \$600.00.

The declaration alleged that the defendant, on June 8, 1923, with force and arms, assaulted the plaintiff, and violently seized, and laid hold of him, and struck him with his fists and with a certain club, many violent blows on the body and head and then and there, with great force and violence, tore and damaged his clothing; and as a result he was greatly hurt, bruised and wounded and became sick, sore and disordered, and so remained for a long time, and was thereby prevented from performing and transacting his affairs and duties; and was obliged to spend divers sums of money to be healed. The ad damnum was \$25,000.00. The defendant filed a plea of the general

240 I.A. 663

ASSISTANT ATTORNEY GENERAL
RECEIVED
JAN 20 1936

ADAM BELLAMY
v.
JAMES BELLAMY
Appellant.

Opinion filed Jan. 20, 1936.

MR. JUSTICE TAYLOR delivered the opinion of

the court.

There is no dispute by the defendant with relation to a judgment in the summary court in favor of the plaintiff, James Bellamy, in an action for damages of \$2,000. The verdict of the jury was for \$1,000.00, and a remittitur of \$200.00, and a judgment was entered in the sum of \$200.00.

The plaintiff alleged that the defendant, on June 5, 1935, with force and arms, assaulted the plaintiff, and violently seized, and laid hold of him, and threw him with his fists and with a certain club, with various blows on the body and head and arms and there, with great force and violence, tore and damaged his clothing; and he would be very greatly hurt, bruised and wounded and become sick, dizzy and disoriented, and he remained for a long time, and was shortly prevented from performing his usual duties, and was obliged to spend divers sums of money to be healed. The defendant was \$2,000.00. The defendant filed a plea of the amount

issue. The case was tried before the court, with a jury.

The evidence of the plaintiff is substantially as follows: He lived at 3437 West 12th Place, Chicago. He worked for the Model Dress & Cloak Company, of which he was president and a director. He received \$85.00 a week for his services. He was 39 years old; five feet five inches in height, and weighed about 145 pounds. On Friday, June 8, 1923, between 3 and 4 P.M., he went with some samples to one Hoffman, one of his customers, to see him about getting an order. Ballis, the defendant, was in the business of manufacturing cloaks and suits, and had a store next to Hoffman's. When he, the plaintiff, got to Hoffman's place, the defendant called to him and said he wished to speak with him. He then went over, and the defendant said, "why don't you pay me for your brother?" The plaintiff replied that what he guaranteed he would pay, but that he did not make any guarantee for his brother. Following that, the defendant called him an obscene name and struck him with his fist a blow on the left side of his face, which knocked him down. In falling, he struck an electric lighting post. He was unable to get up, but was helped up by one Easson, one of Hoffman's salesmen. He was dizzy and everything about him seemed dark. He was taken into Hoffman's store and was there for about an hour. His face was swollen and his clothes had gotten dirty from the sidewalk. The swelling lasted three or four days. From Hoffman's, he went to his office on West Roosevelt Road. He stayed there about three quarters of an hour, when one Shapire took him home in his machine. About midnight, he

leave. The case was tried before the court, with a jury.

The witness of the plaintiff is approximately

as follows: He lived at 3237 West First Street, Chicago,

he worked for the Wood Dress & Blank Company, of which

he was president and a director. He received \$100.00

a week for his services. He was 35 years old; five feet

five inches in height, and weighed about 145 pounds.

On Friday, June 2, 1905, between 2 and 4 P.M., he went

with some samples to one William, one of his customers,

to see him about getting an order. William, the defendant,

was in the business of manufacturing clocks and watches, and

had a store near the defendant's. When on the plaintiff,

got to William's place, the defendant called to him and

said he wished to speak with him. He then went over, and

the defendant said, "Why don't you pay me for your property?"

The plaintiff replied that what he purchased he would pay.

But that he did not have any guarantee for his property.

William said, the defendant pulled him an opposite name

and struck him with his fist a blow on the left side of

his face, which knocked him over. In falling, he struck

an electric lighting post. He was unable to get up, but

was helped up by one person, one of William's salesman.

He was dizzy and everything about him seemed dark. He

was taken into William's store and was there for about an

hour. The case was settled and the clothes and gotten dirty.

from the accident. The meeting lasted seven or ten days.

From William's, he went to his office at West Commercial Street,

he stayed there about three weeks of an hour, when one

employee took him home in his machine. About midnight, he

called Dr. Halpert, who came about one o'clock and stayed with him until 5 o'clock. Dr. Halpert attended him four or five times, and then he called Dr. Bernstein. He did not work, on account of his illness, for two and a half months. For two months he suffered from dizziness, and his kidneys bothered him. He did not draw any salary for the two and a half months that he was away from his work. Up to the time he was assaulted, he had been in good health.

One Ossey was called by the plaintiff. He testified that, at the time in question, he was on the sidewalk near Hoffman's place of business at the time the defendant called the plaintiff over; that he did not hear what the defendant said; that he was not standing there when the plaintiff and the defendant were talking, as he had left to go to his store across the street; that he did not see the defendant strike the plaintiff. He further testified he now does business with the defendant, but not with the plaintiff, although prior to the time in question he used to do business with the plaintiff.

One Besser, called by the plaintiff, testified that he was a salesman at Hoffman's; that on the day in question, he saw the plaintiff at Hoffman's; that the plaintiff said he did not feel well; that he took him into the store and gave him some water; that the defendant was busy, and the plaintiff did not tell him about what had occurred; that he, the witness, did not see what took place; that he did not see any swelling of the face, and the plaintiff did not complain of being dizzy.

time he was awarded, he had been in good health. A half month later he was away from his work. Up to the 15th of March he did not show any activity for the two and a half months he suffered from diarrhoea, and his kidneys work, on account of the illness, for two and a half months. Five times, and then he called Dr. Schwartz. On the 15th of April his condition had changed. Dr. Schwartz attended him for a week and a half. He called Dr. Schwartz and stayed

the same in question he used to be known with the firm-
the defendant, but was with the plaintiff, although prior to
the plaintiff, he further testified he was doing business with
the defendant; that he did not see the defendant during
the defendant were talking, or he had left to go to his store
said; that he was standing there when the plaintiff was
the plaintiff over; that he did not hear what the defendant
Hartman's place of business at the time the defendant was
the fact, or the time is mentioned, he was on the plaintiff was
the party was called by the plaintiff. He testified

the plaintiff did not complain of being ill.

Dr. Halpert, a graduate of Loyola University, who had practiced his profession for ten years, testified, that on the night in question, about one o'clock, he called on the plaintiff at his home, and examined him; that he found him in bed; that he found a swelling and bruises over the left side of the head and face, and, also, a contusion and black and blue marks over the left kidney; that the plaintiff seemed to be suffering excruciating pain in the region of the kidneys; that he injected morphine several times to stop the pain; that the left side of the head was black and blue; that he, the plaintiff, after that, called at his, the doctor's, office every week for about ten weeks.

Dr. Bernstein, a graduate of the University of Illinois, testified that the plaintiff was a patient of his, and called him on June 9, 1933; that he visited the plaintiff and found him in bed suffering from shock; that he had a subnormal temperature, rapid pulse and respiration; that he showed a contusion on the left side of the temple and several scratches on his face, and showed a very marked contusion or abrasion over the left kidney; that a test of the urine showed blood, a hemorrhage of the kidneys; that he saw the plaintiff on June 10, 11, 18 and 21. On cross-examination, he testified that the condition was permanent, and no treatment would be of any avail; that it appeared to him, the plaintiff had received an injury of some sort; that the plaintiff complained of headaches and dizziness, and that he diagnosed the case as one of concussion of the brain.

From the foregoing, it will be seen that the evi-

Dr. Roberts, a graduate of Johns Hopkins University.

who had presented his dissertation for the degree, testified that on the night in question, about one o'clock, he called on the plaintiff at his home, and remained with him until his bed; that he found a swelling and tenderness over the left side of the head and face, with a sensation and black and blue mark over the left kidney; that the plaintiff seemed to be suffering excruciating pain in the region of the kidneys; that he injected morphine several times to stop the pain, that the left side of the head was black and blue; that he, the plaintiff, after that, called on him, and looked at him every week for about ten weeks.

Dr. Roberts, a graduate of the University of Illinois, testified that the plaintiff was a patient of his and called him on June 11, 1903; that he visited the plaintiff and found him in bad suffering from kidney trouble; that a subcutaneous injection, which he made and testified that he caused a swelling on the left side of the face and kidney region on his face, and showed a very marked contusion or swelling over the left kidney; that a test of the urine showed blood, a hemorrhage of the kidneys; that he now has plaintiff on June 10, 11, 18 and 21. On examination, he testified that the condition was improving, and no treatment would be of any avail; that it appeared to him, the plaintiff had received an injury of some sort; that the plaintiff complained of tenderness and stiffness, and that he diagnosed the case as one of contusion of the brain.

From the foregoing, it will be seen that the evi-

dence for the plaintiff, taken by itself, quite sufficiently proves not only liability on the part of the defendant, but, also, that the verdict was not excessive.

The evidence of the defendant is that at the time and place in question, he said to the plaintiff, "You were good for your brother; why don't you pay me off;" that the plaintiff said, "I never was good for my brother," and then called the defendant an obscene name, and a liar; that then he, the defendant, with his open hand, slapped him on the left side of the face; that he did not knock him down, nor did he fall down; that he, the plaintiff, walked down the street without anyone helping him. He testified, further, that he weighed 212 pounds. Three witnesses, Bluestein, Ballis (a son of the defendant) and Sabath (employed by the Sherman Cloak Company, the company the defendant is connected with) corroborate the defendant and testified that they heard the plaintiff call the defendant an obscene name and a liar.

Interpreting the verdict for the plaintiff, it becomes obvious the jury did not believe the witnesses for the defendant. And the question arises whether there are such discrepancies and inconsistencies in the testimony, as it is disclosed in the record, that we must, considering it reasonably, conclude that it is manifestly against the weight of the evidence. As the defendant admitted the assault, the only question of fact before the jury, in reality, was the violence of the assault or blow, and its consequence. On that subject we think the evidence of the plaintiff and the two doctors, is quite persuasive; at least it would be un-

Dr. Roberts, a graduate of Johns Hopkins University.

who had practiced his profession for ten years, testified that on the night in question, about one o'clock, he called on the plaintiff at his home, and remained with him until his wife; that he found a swelling and tenderness over the left side of the head and face, and, when, in examination and touch, he found over the left kidney; that the plaintiff seemed to be suffering excruciating pain in the region of the kidney; that he injected morphine several times to stop the pain; that the left side of the head was black and blue; that he, the plaintiff, after that, called at his, the doctor's, office every week for about ten weeks.

Dr. Roberts, a graduate of the University of Illinois, testified that the plaintiff was a patient at his office and called him on June 3, 1905; that he visited the plaintiff and found him to be suffering from shock; that he had a subnormal temperature, weak pulse and respiration; that he showed a swelling on the left side of the face and several swellings on his back, and showed a very marked contusion at the junction of the left kidney; that a test of the urine showed blood, a hemorrhage of the kidney; that he saw the plaintiff on June 10, 11, 18 and 21. He examined him, he testified that the condition was excruciating, and no treatment would be of any avail; that it appeared to him, the plaintiff had received an injury to some part; that the plaintiff complained of pain and tenderness, and that he diagnosed the case as one of contusion of the brain.

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The evidence of the defendant is that at the time and place in question, he said to the plaintiff, "You were good for your brother; why don't you pay me off;" that the plaintiff said, "I never was good for my brother," and then called the defendant an obscene name, and a liar; that then he, the defendant, with his open hand, slapped him on the left side of the face; that he did not knock him down, nor did he fall down; that he, the plaintiff, walked down the street without anyone helping him. He testified, further, that he weighed 213 pounds. Three witnesses, Bluestein, Ballis (a son of the defendant) and Sabath (employed by the Sherman Cloak Company, the company the defendant is connected with) corroborate the defendant and testified that they heard the plaintiff call the defendant an obscene name and a liar.

Interpreting the verdict for the plaintiff, it becomes obvious the jury did not believe the witnesses for the defendant. And the question arises whether there are such discrepancies and inconsistencies in the testimony, as it is disclosed in the record, that we must, considering it reasonably, conclude that it is manifestly against the weight of the evidence. As the defendant admitted the assault, the only question of fact before the jury, in reality, was the violence of the assault or blow, and its consequence. On that subject we think the evidence of the plaintiff and the two doctors, is quite persuasive; at least it would be un-

reasonable for us, the question depending so much upon credibility, to hold that the verdict was clearly against the weight of the evidence.

If the jury, as to the injuries suffered by the plaintiff as the result of the assault, believed the testimony given for the plaintiff, which belief we cannot reasonably say was unjustified, then in our judgment, the verdict was not only not excessive, but erred, if anything, on the side of indulgence towards the defendant.

Beside the contentions as to liability and quantity of damages, which two we have already held to be untenable, it is urged, (1) that it was error to permit the plaintiff to testify that at the time of the assault he was getting \$65.00 a week and that as long as he did not work he got no compensation, and that he did not work for two and one half months; and (2) that the court erred in giving an instruction on exemplary damages.

(1) It is contended that the court erred in permitting the plaintiff to testify that at the time of the assault he was working for the Model Dress & Cloak Company for \$65.00 a week and that as long as he did not work, two and a half months, he got no salary; that the testimony was incompetent because no special damage was alleged in the declaration. The declaration alleged that the plaintiff became sick and remained so for a long time, during all of which time he suffered great pain "and was hindered and prevented from performing and transacting his affairs and duties." In Chicago and Erie R. R. Co. v. Neesh, 163 Ill.305,

reasonable for me, the question depending as such upon
credibility, to hold that the verdict was clearly against
the weight of the evidence.

If the jury, as to the injuries sustained by the
plaintiff as the result of the accident, believed the testi-
mony given for the plaintiff, which belief we cannot reason-
ably say was unjustified, then in our judgment, the verdict
was not only not excessive, but correct. It represents, on the
side of indulgence towards the defendant.

Besides the contention as to liability and quantum
of damages, which we have already held to be untenable,
it is urged, (1) that it was error to permit the plaintiff
to testify that at the time of the accident he was earning
\$22.00 a week and that as long as he did not work he got
no compensation, and that he did not work for two and one
half months; and (2) that the court erred in giving an in-
struction on exemplary damages.

(1) It is contended that the court erred in per-
mitting the plaintiff to testify that at the time of the
accident he was working for the Hotel Bristol & Hotel Company
for \$22.00 a week and that as long as he did not work, two
and a half months, he got no salary; that the testimony was
inconsistent between no special damage was alleged in the
declaration. The declaration alleged that the plaintiff
became sick and remained so for a long time, during all of
which time he suffered great pain and was harassed and
prevented from performing and transacting his affairs and
business." In Whitely and Ellis v. E. C. Walsh, 182 Ill. 230,

the court said,

"The rule deducible from the cases in this state is, that in order to recover compensation for inability to work at the plaintiff's ordinary and usual employment or business, all that is necessary in the declaration is the general averment of such inability, caused by the injury, and consequent loss and damage, and that proof of his particular employment or business and of his ordinary wages or earnings therein is admissible in evidence under such general averment, but that when it is sought to recover for loss of profits, or earnings that depend upon the performance of a special contract or engagement, then these special and particular damages, and the facts on which they are based, must be set out in the declaration."

Chicago Union Traction Co. v. Brethauer, 223 Ill.

521; Barnes v. Danville Street Ry. Co., 235 Ill. 586.

Further, the record shows that the testimony, when elicited, was not objected to. Pass v. Briggs & Turivas, 231 Ill. App. 214. In our judgment, this contention is untenable.

(2) It is contended that the court erred in giving for the plaintiff an instruction on exemplary damages. The words complained of are the following:

"And in case the jury believe from the evidence that the assault was wanton, reckless, or vicious, and uncalled for in its character, then the jury may add to such actual damages, if any such they find, such a sum as they may believe from the evidence would be reasonable and just, as smart money or punishment."

The record shows, however, that the court gave an instruction on the same subject, exemplary damages, at the request, also, of the defendant.

It is the law that where both sides ask the trial judge to instruct the jury on the question of exemplary damages and by so doing admit that such damages are involved, neither

the court said,

"The rule applicable from the case in this state is, that in order to recover compensation for inability to work at the plaintiff's ordinary and usual employment or business, all that is necessary in the declaration is the general statement of such inability, caused by the injury, and consequent loss of earnings, and that proof of the material employment or business and of the inability to work or business thereon is sufficient in evidence with such general statement, but that what is in issue is a question for the jury to decide whether or not the plaintiff was prevented of a substantial part of his earnings by the injury, and whether such injury was caused by the defendant's negligence or otherwise, and the facts on which they are based, must be set out in the declaration."

Chicago Union Trust Co. v. Walker, 113 Ill.

211; Walker v. Central Trust Co., 113 Ill. 211.

Further, the record shows that the declaration, when filed, was not objected to. Id. v. Walker & Walker, 113 Ill. 211. In our judgment, this contention is untenable.

(3) It is contended that the court erred in

giving to the plaintiff an instruction as to the damages. The court's opinion of the case is as follows:

"And in case the jury believe from the evidence that the plaintiff was injured, disabled, or otherwise, and entitled to the compensation, then the jury may add to such actual damages, if any were paid, such a sum as they may believe the plaintiff would be reasonably and justly entitled to receive."

The record shows, however, that the court gave an instruction on the same subject, substantially as follows, also, at the request.

It is the law that where damages are the result

of an injury the jury on the question of damages may add to such actual damages such a sum as they may believe the plaintiff would be reasonably and justly entitled to receive."

side will be entitled to have it held that compliance therewith was error. Illinois Central R. R. Co. v. Latimer, 128 Ill. 163.

Finding no material error in the record, the judgment will be affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

will be added to the list of cases

Illinois v. Board of Education

100 Ill. 101

and the result is the same

as in the case of the

same

Illinois v. Board of Education

350 - 30203

JAN KUSZEWSKI,

Appellee,

v.

PETER NOVAK,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 663

Opinion filed Jan. 20, 1926

MR. JUSTICE TAYLOR delivered the opinion of the court.

On March 11, 1921, the plaintiff, Jan Kuszewski, and the defendant, Peter Novak, entered into a written contract of exchange by which the plaintiff was to convey to the defendant the premises known as 1812 West Chicago avenue, at a value of \$12,400.00, and the defendant was to convey certain premises to the plaintiff and pay to him, in addition thereto, \$3400.00 in cash. The contract recites, in addition to the foregoing, the following: "Each party to this contract has signed a judgment note for \$500.00 for the faithful performance of this contract." Pursuant to that provision, the plaintiff gave the defendant his note for \$500.00, and the defendant gave the plaintiff his note for \$500.00.

On September 9, 1922, the plaintiff filed a statement of claim and cognovit in the Municipal Court on the \$500.00 note, which had been delivered to him by the defendant, and judgment was entered that day in favor of the plaintiff and against the defendant, in the sum of \$594.25.

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THE UNIVERSITY

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240 I.A. 663

Opinion filed Jan. 30, 1936

Mr. Justice Tilton delivered the opinion of

the court.

On March 11, 1931, the plaintiff, the University,

and the defendant, Robert H. Hark, entered into a written contract of exchange by which the plaintiff was to convey to the defendant the premises known as 1111 West 10th Avenue, at a value of \$12,400.00, and the defendant was to convey certain premises to the plaintiff and pay to him, in addition thereto, \$2000.00 in cash. The contract recited in addition to the foregoing the following: "and that in this contract has also a judgment note for \$2000.00 for the plaintiff's endorsement of this contract." Thereafter to this statement, the plaintiff gave the defendant his note for \$2000.00, and the defendant gave the plaintiff his note for \$2000.00.

On December 9, 1931, the plaintiff filed a statement

of claim and cognovit in the District Court on the \$2000.00 note, which had been delivered to him by the defendant, and judgment was entered that day in favor of the plaintiff and against the defendant, in the sum of \$2000.00.

On April 9, 1923, the defendant filed a petition alleging, among other things, that he had complied with all the provisions of the contract and was ready, willing and able to carry out his part of the contract, but that the plaintiff was not ready and did not carry out his part of the contract, and that the plaintiff conspired with the real estate broker, Plackiewicz to obtain the judgment above mentioned. It was further alleged that the defendant had a good defense to the entire amount of the judgment. The prayer of the petition was that by reason of the fraudulent acts of the plaintiff and Plackiewicz, the judgment be opened up and the defendant given leave to defend. On the same day, April 9, 1923, the judgment was opened up and a trial ordered. The order provided that the judgment should stand as security, and that the execution should be staid until the further order of the court; also, that the petition stand as an affidavit of merits for the defendant.

On July 9, 1924, an order was entered vacating the judgment by confession, and dismissing the suit for want of prosecution.

On October 9, 1924, an order was entered substituting Wm. A. Sherwin as attorney for the plaintiff in place of Paul V. Pallasch.

On October 14, 1924, by agreement of the parties, an order was entered that the order of July 9, 1924, dismissing the suit for want of prosecution be vacated and set aside.

On April 8, 1904, the defendant filed a petition alleging, among other things, that he had conspired with all the members of the committee and was ready, willing and able to carry out his part of the contract, and that the plaintiff was not ready and able to carry

out his part of the contract, and that the plaintiff conspired with the two other parties, the defendant to obtain the judgment now mentioned. It was further alleged

that the defendant had a good defense to the action and that the plaintiff was the cause of the action

and that by reason of the fraudulent acts of the plaintiff and the defendant, the judgment was obtained and the defendant was forced to defend. On the same day, April 8, 1904, the judgment was entered and a writ of certiorari

was granted that the judgment should stand as such, and that the execution should be made until the further order of the court; also, that the petition stand as an affidavit of merits for the defendant.

On July 2, 1904, an order was entered vacating the judgment by certiorari, and directing the writ for writ of execution.

On October 2, 1904, an order was entered directing the plaintiff to appear for the plaintiff in place of Paul W. Wilson.

On October 14, 1904, by agreement of the parties, an order was entered that the writ of July 2, 1904, should stand as an affidavit of merits for the plaintiff and that the

On November 13, 1924, by agreement of the parties, the cause was submitted to the court for trial, without a jury.

There was a trial beginning on November 13, 1924, and a finding and judgment in favor of the plaintiff and against the defendant, in the sum of \$594.25. This appeal is from that judgment. No brief has been filed for the plaintiff.

In our opinion, the evidence warranted setting aside the judgment and entering judgment for the defendant. The contract of exchange was made and the notes delivered pursuant thereto, and we think that the evidence affirmatively shows that the plaintiff was not entitled to recover.

It is claimed by the plaintiff that when the parties met to close the deal, it was found that the building, on the property the defendant had contracted to convey to the plaintiff, extended a foot or more over and on certain contiguous property belonging to one Thurbeck, and that although the defendant promised to furnish a plat and proof that the building did not overlap, he failed to do so, and as a consequence, after waiting a long time in vain, he, the plaintiff, confessed judgment on the note. It will be observed that the note was dated March 11, 1921, the date of the contract, and the judgment by confession was entered on September 9, 1922.

On the other hand, the defendant testified that he attended a meeting at which were present himself, the plain-

On November 12, 1901, by agreement of the parties,
the cause was submitted to the court for trial, without a
jury.

There was a trial beginning on November 12, 1901,
and a finding and judgment in favor of the plaintiff and
against the defendant, in the sum of \$250.00. This amount
is from that judgment. It is not now due for the
plaintiff.

In the opinion, the evidence warranted finding
against the plaintiff and ordering judgment for the defendant.
The contract of assignment was made and was not dis-
satisfied by the evidence, and we think that the evidence
affirmatively shows that the plaintiff was not entitled to
recovery.

It is ordered by the plaintiff that upon the
parties be in show the trial, it was found that the plaintiff
on the property the defendant had conveyed to money to the
plaintiff, received a lot of work and an order in con-
sideration of property belonging to the defendant and that the
plaintiff the defendant received in return a lot and more
that the plaintiff did not receive, he failed to do so, and
as a consequence, after making a long time in view, he, the
plaintiff, contracted judgment on the note. It will be ob-
served that the note was dated March 11, 1901, and that it
the contract, and the judgment by confession was entered on
September 2, 1901.

On the other hand, the defendant testified that he
attended a meeting at which were present himself, the plain-

tiff and Pallasch, attorney for the defendant, and that when Pallasch at that meeting said that defendant's building was partly over on the next lot, he, the defendant, told him that that was not the fact. The witness Pallasch, a real estate dealer, who was present at the meeting, which he says took place in April, 1921, when the deal was to be closed, testified that Thurbeck told him that the building extended over on his lot; that the defendant was then informed of that fact, but said that that was not so, and that he would furnish them a plat, Pallasch further testified that "he would furnish a plat, and then we were waiting for Mr. Novak to furnish a plat," which he has never done. He further testified, "We were preparing for the closing of the deal, but Mr. Novak was to furnish evidence that the building was not over on the lot;" that the defendant never furnished that evidence, and that the plaintiff was ready at all times to close the contract. There was put in evidence the testimony of one Bremer, a surveyor, and, also, a plat made by him of the property in question.

The plat shows that the building in question, which was a one-story brick theatre on the property known as Street Number 1820 West Chicago Avenue, extends over west and, also, east of the lot line. Notations on the plat are as follows: "S.E. Corner of Brick Pier is 1' 3-7/8" W. & 1-7/8" N. of lot corner." "S.E. Corner of Brick Pier is 0-3/4" W. & 1-1/8" N. of lot corner."

The plaintiff testified that he was present at a meeting at which there were also present Pallasch, Novak and Carynski, at whose office the contract provided that the

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and Grynaki, it was also the contract provided that the
a receipt of which there were also present witnesses, took
the receipt entitled that it was provided as

negotiations should be closed; that he was ready to close the transaction at that time; that when he made the contract, he did not know that there was anything wrong with the building; that he told Pallasch to look the matter over as he did not wish to get into any trouble; that Pallasch then asked the defendant for a plat; that the defendant said he did not have it with him, and then Pallasch stated that under those circumstances they could not close the contract; that the defendant said he would bring it in on some other day, but never afterwards did so.

On cross-examination, the plaintiff testified that Pallasch represented him as his lawyer in the deal; that he himself did not know that the building was on some one else's land until a neighbor told him that it was on his lot; that he himself did not know whether the defendant's property overlapped some one else's property or not. He further testified that he did not give the defendant any notice, after waiting something over a year, before beginning suit, stating, also, that as to his own property, he had the abstract brought down to date.

The testimony of the defendant, when called in rebuttal, is to the effect that they sent him home to get some files and a lease; that he went to get them, and "when I got back again they told me everything is over. They ain't going to close the deal, and I asked him what is about the matter, and he said, 'well, everything is over. I can't make my arrangements to close the deal.'"

When the trial judge said, "I can't understand

negotiations should be closed; that he was ready to close the transaction at that time; that when he made the statement, he did not know that there was anything wrong with the building; that he told Kelland to look the matter over as he did not wish to get into any trouble; that Kelland then asked the defendant for a plan; that the defendant said he did not have it at his place, and then Kelland stated that under those circumstances they could not close the contract; that the defendant said he would bring it in on some other day, but never returned it.

On cross-examination, the defendant testified that Kelland represented him as his lawyer in the deal; that he himself did not know that the building was in some one else's land until a neighbor told him that it was on his lot; that he himself did not know whether the defendant's property overlapped some one else's property or not; he further testified that he did not have the defendant any longer, after waiting something over a year, before beginning suit, stating, also, that as to his own property, he had the abstract brought down to date.

The testimony of the defendant, then called in rebuttal, is to the effect that they went his place to get some files and a lamp; that he went to get them, and when I got back again they told me everything is over. They said, going to close the deal, and I asked him what is about the matter, and he said, 'well, everything is over. I can't make any arrangements to close the deal.'

Then the trial judge said, 'I can't understand

why they didn't close the deal," the witness answered, "They didn't tell me why." "They didn't execute a written notice or anything - no nothing; and a week afterward I go to the lawyer's to close the deal, and he says, 'That deal is over you give trouble with him,' he tells me that day."

When Pallasch was called as a witness in rebuttal on behalf of the plaintiff, and asked why the deal was not closed, he testified, "On account I could not have no proof as to the situation of the building on the lot." and when asked the question, "Was there any other reason why this deal was not closed, other than the overlapping?" he answered, "Yes, those judgments and things in the letter from the Chicago Title & Trust Company." The latter referate a letter dated March 24, 1921, sent by the Chicago Title & Trust Company to Carynski, the attorney, reciting that the examination of the title to the property in question showed that it was subject, among other things, to a lease by one Thurbeck on the premises in question.

The question arises whether the evidence shows that the defendant failed in "the faithful performance" of the obligations upon him, which were set forth in the written contract of exchange, and whether the plaintiff so complied with the requirements of that contract as to entitle him to recover on the \$500.00 note in question. Although the plaintiff claimed that he was not in default and was ready to perform, nevertheless, the written contract put upon him

why they didn't close the deal," the witness answered.
"They didn't tell me why." "They didn't execute a written
notice or anything - no nothing - and I was surprised I
to be the lawyer's to close the deal, and he says, 'Just
tell it over your own telephone with her, he said he had
day.'"

"Then Williams was called as a witness in re-
butted on behalf of the plaintiff, and asked why the
deal was not closed, he testified, 'On account I could not
have no proof as to the situation of the building on the
lot,' and when asked the question, 'Was there any other
reason why the deal was not closed, other than the over-
looking,' he answered, 'Yes, those statements and things in
the letter from the Chicago Title & Trust Company.' The
latter related a letter dated March 24, 1911, sent by the
Chicago Title & Trust Company to Wynant, the attorney, re-
stating that the examination of the title to the property
in question showed that it was subject, among other things,
to a lease by one Foxworth to the plaintiff in question."

The question arises whether the evidence shows
that the defendant relied in "the future performance"
of the obligation upon him, who was not both in the
written contract of exchange, and whether the plaintiff re-
lied with the knowledge of that contract as to ex-
tend him to recover on the \$500.00 note in question. Al-
though the plaintiff claimed that he was not in default and was
ready to perform, nevertheless, the written contract put upon him

certain obligations which he was bound to fulfill before he was entitled to charge the defendant with failure to perform, and thereby obtain the right to recover on the note in question.

The contract provides that:

"In case material defects be found in said title, and so reported, then if such defects be not cured within sixty days after such notice thereof, this contract shall at the option of the party delivering such objections become absolutely null and void; notice of such election to be given to the other party; but the party delivering such objections may nevertheless elect to take such title as it then is, and in such case the other party shall convey as above agreed; provided, however, that such party delivering such objections shall have first given a written notice of such election, within ten days after the expiration of the said sixty days and tendered performance hereof on his part. In default of such notice of election to receive such title and accompanying tender within the time so limited, the party delivering such objections shall, without further action by either party, be deemed to have abandoned his claim upon said premises and thereupon this contract shall cease to have any force or effect as against said premises, or the title thereto or any right or interest therein, but not otherwise.

The notices required to be given by the terms of this agreement shall in all cases be construed to mean notices in writing, signed by or on behalf of the party giving the same, and the same may be served either upon the other party or his agent."

The evidence shows that no written notice of material defects was given to the defendant; that no notice of election to declare the contract void was given; that no written notice of election to take the title as it was, was given, from all of which it follows, applying the provision of the second sentence in the above quoted paragraph from the contract, that the plaintiff must "without further action by either party, be deemed to have abandoned his claim upon

entirely correct and which he was bound to fulfill before he
was entitled to change the defendant with reference to the
form, and to very obtain the right to remove on the note
in question.

The contract provides that:

"In case material defects be found in said
title, and no remedy, then it shall be the duty of
not cured within sixty days after notice
thereof, this contract shall be at the option of
the party delivering such objection to be
immediately null and void; notice of such objection
to be given to the other party; but the party
delivering such objection may nevertheless elect
to take such title as it then is, and in such case
the other party shall convey as above aforesaid; pro-
vided, however, that such party delivering such
objection shall have first given a written notice
of such objection, within ten days after the expi-
ration of the said sixty days and ten days before
the expiration of the said term. In default of such
notice of objection to receive such title and re-
compensation within the time so limited, the
party delivering such objection shall, without
further notice of either party, be deemed to
have abandoned his claim and shall give notice
thereof to the other party and shall cease to have any
force or effect as against such claim, or the
title thereto or any right or interest therein,
but not otherwise.
The notice required to be given by the party
of this agreement shall in all cases be conveyed
to such notice in writing, signed by or on behalf
of the party giving the same, and the same may be
served either upon the other party or his agent."

The evidence now put no written notice of
material defects was given to the defendant; that no notice
of objection to receive the contract was given; that no
written notice of objection was given to the other party
given, from all of which it follows, applying the provision
of the second sentence in the above noted paragraph that the
contract, that the plaintiff must without further action
by either party, be deemed to have abandoned his claim upon

said premises," and the contract to have become without "any force or effect as against said premises, or the title thereto or any right or interest therein, but not otherwise."

It may be true that the parties met to close the deal, and that at that meeting it was claimed for the plaintiff that the building the defendant contracted to convey to the plaintiff overlapped neighboring property, and that, although the defendant claimed that such was not the fact, the evidence of the surveyor and the plat showed that the defendant's building did overlap, and that, therefore, the title to the defendant's property was defective, but inasmuch as the written contract of exchange provided in express terms that the plaintiff, in case "material defects" were found, was obliged to give written notice, and no such notice was given, it follows that having failed to comply with the requirements of the contract, he himself, was in default and, therefore, not entitled to sue upon the note and claim a lack of faithful performance on the part of the defendant. Written notice, by the terms of the written contract, was made a prerequisite to liability on the defendant for "material defects" in the defendant's title.

We are of the opinion, therefore, that as the evidence shows that the plaintiff did not comply with the requirements of the contract; did not pursue the method expressly prescribed by the written contract, in order to put the defendant in default, he was not entitled to recover on the note in question.

The judgment, therefore, will be reversed.
THOMSON, P.J. AND O'CONNOR, J. CONCUR. REVERSED.

will prevail," and the contract is void because without
"any force or effect as against said premises," at the
time thereof or any time or interest therein, but not
otherwise."

It may be true that the question was to close the deal,
and that at that meeting it was claimed for the plaintiff
that the building the defendant contracted to convey to
the plaintiff overlapped neighboring property, and that,
although the defendant claimed that was not the fact,
the opinion of the surveyor was against the defendant,
therefore, building the building, and that, therefore, the
title to the defendant's property was defective, but the
reason for the action concerned of damages provided in
section 1000, that the plaintiff, in case "contracted to convey"
were found, was obliged to give written notice, and no such
notice was given, it follows that action failed to comply
with the requirements of the statute, inasmuch as the
defendant and, therefore, not entitled to sue upon the note and
claim a lack of essential performance on the part of the de-
fendant. Written notice, by the terms of the statute con-
tained, was made a prerequisite to liability on the bond-
and for material default in the defendant's title.

As one of the reasons, therefore, that in the
evidence shows that the plaintiff did not comply with the
requirements of the statute; did not receive the money
expressly provided by the written contract, in order to
pay the defendant in default, he was not entitled to recover
on the note in question.

The judgment, therefore, will be reversed.
REVEREND J. J. O'NEILL, J. CLERK.

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359 - 30212

ARSULA NAVIKAS,

Appellee,

v.

WILLIAM NAVIKAS,

Appellant.

5008a
APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 663

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion of
the court.

On June 7, 1923, the complainant, Arsula Navikas, filed her bill for divorce in the Circuit Court of Cook County, against her husband, the defendant, William Navikas, praying for a divorce on the ground of extreme and repeated cruelty. On June 22, 1923, an order was entered by the Chancellor that \$7.00 per week be paid to the complainant for the support of her child. On June 23, 1923, the husband filed an answer in which he denied the charges of cruelty.

On September 16, 1924, the cause came on for hearing in open court before the Chancellor. Both parties were represented by counsel. Evidence was introduced by both parties, and on September 29, 1924, a decree of divorce in favor of the complainant was entered. That decree provided, in addition to granting a divorce, that the complainant have the custody of their child, a daughter; that the defendant pay to the complainant, until the further order of the court, for the support of herself and the child

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* **CAVITAE ADJUNA**

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26



THE UNIVERSITY OF CHICAGO

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322 A. 1045

Opinion filed Jan. 20, 1938.

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

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\$8.00 per week; that the complainant retain as her own separate and sole property certain second mortgage notes . The decrees reserved for further disposition the subject of an allowance to the complainant for her expenses for court reporter and witness fees and for her reasonable solicitor's fees.

On October 18, 1924, a supplemental decree was entered ordering that the defendant pay to the complainant the sum of \$200.00 for her reasonable solicitors' fees, in four monthly installments of \$50.00, beginning December 18, 1924, and that the defendant pay to the complainant the sum of \$52.50 for her expenses for the court reporter. This appeal is by the defendant from the above mentioned decree of divorce entered on October 14, 1924.

The parties were married on February 3, 1913. At the time of the trial they had one child, a daughter, born on October 3, 1913. On June 6, 1923, the husband and wife separated.

The evidence of the wife is to the effect that on May 17, 1916, the defendant pushed her against the stove so that the skin was burned off her right arm; that on June 15, 1917, he pushed her against the wall, and when she ran through the door, threw a cup of coffee at her and struck her; that on December 15, 1919, he struck her in the eye with his hand; that on July 4, 1922, he pushed her out of bed.

It is practically admitted by counsel for the defendant, and the evidence justifies the admission, that the charges of extreme and repeated cruelty, as alleged, were proven, but it is claimed, in exculpation, that the evidence all taken together demonstrates that there was subsequent condonation; and that although the defendant did not file a plea of condonation, the evidence considered in connection with the allegations of the complainant establishes a case of condonation so clearly and firmly, as to obviate the necessity of making it the subject of a special plea.

The defendant having failed to plead condonation at the outset, the question arises whether that defense is here available. In Klekamp v. Klekamp, 275 Ill. 98, the court said that the defense of condonation "should have been pleaded or set up in his answer," but intimated that it was within the power and discretion of the Chancellor to consider the subject of condonation "without regard to the question whether or not such defense was properly pleaded." In that case the court, also, said that "a defense of condonation is an affirmative one, and that the burden of proof is on the one claiming condonation." In the instant case, therefore, we shall consider the evidence as it pertains to condonation, even though the defendant failed to file a plea setting up that defense.

Where extreme and repeated cruelty is the gravamen of a bill, and the complainant proves a series of acts which in and of themselves are sufficient to justify a divorce, and the evidence shows that the parties lived together for quite

It is practically admitted by counsel for the defendant, and the evidence justifies the admission, that the charges of outrage and attempted outrage, as alleged, were proven, but it is alleged, in excusation, that the evidence all taken together demonstrated that there was substantial confusion; and that although the defendant did not file a plea of confusion, the evidence introduced in connection with the allegations of the complaint established a case of confusion so clearly and timely as to obviate the necessity of raising the subject of a special plea.

The defendant having failed to plead acquittal at the outset, the question arises whether that defense is now available. In People v. Bishop, 175 Ill. 66, the court said that the defense of "confusion" would have been pleaded or set up in "its season," but intimated that it was within the scope and discretion of the court to consider after the subject of acquittal without regard to the question whether or not such defense was properly pleaded. In that case the court, also, said that "a defense of confusion is an affirmative one, and that the burden of proof is on the defendant's confession." In the instant case, therefore, we shall consider the evidence as it relates to confusion, even though the defendant failed to file a plea setting up that defense.

With respect to the evidence, it is the position of the defendant that the evidence proves a case of confusion, and that the defendant is entitled to a verdict, and the evidence shows that the parties lived together for some

a period of time thereafter, it is not necessary to refute a claim of condonation to prove such subsequent misconduct as would in and of itself justify a divorce.

In Farnham v. Farnham, 73 Ill. 497, where such acts of cruelty were proven as to justify a decree of divorce, unless they were subsequently condoned, the court said, "Condonation is defined in the books as forgiveness, upon condition the injury shall not be repeated, and is dependent upon future good usage and conjugal kindness." Citing Bishop on Marriage and Divorce, Section 370, and Davis v. Davis, 19 Ill. 334.

Schouler says, "Any misconduct, not necessarily of the same class as that condoned, will revive the condoned offense (Boose v. Boose, 198 Ill. App. 387), even where the subsequent acts do not form an independent cause of action, as condonation is conditioned on future treatment with conjugal kindness. (Moorehouse v. Moorehouse, 90 Ill. App. 401), but slight acts of coldness or unkindness will not revive." Schouler, further, says, "the court will connect the whole of the unfaithful partner's conduct in order to form a correct judgment. Judicial inclination, on the whole, is to give to the injured one whose experiment of generosity has thus failed, the ample benefit of the original breach of conjugal duty."

The evidence shows that the last act of extreme cruelty took place on July 4, 1932, and that their separation took place on June 6, 1933, and it is urged for the defendant that it does not show that in the interim any-

a period of time thereafter, it is not necessary to
take a claim of exemption in those cases where
discovery is made in one of these parties' hands.

In Barber v. Barber, 171 U.S. 474, 487, where each

party of money was given as to justify a claim of
discovery, where they were subsequently conveyed, the court
said, "Constitution is defined in the books as follows:
"from section 10 injury shall not be retained, and in
discovery upon these facts each party has a right to
claim a right in the same." Section 37, and

State v. State, 12 U.S. 114.

Section 37, "any discovery, not necessarily

of the same class as that conveyed, will receive the same

same effect (Barber v. Barber, 171 U.S. 474, 487), even

where the subsequent work is not done as independent of

it rather, as consideration is considered as being different

with certain findings. (Barber v. Barber, 171 U.S. 474, 487).

and right of action of discovery or otherwise will not

receive. "Discovery, however, is not the same as discovery

the whole of the original matter's content in order to

have a correct judgment. "Discovery, however, is not the same as discovery

is to give to the injured and some exposure of discovery

has been failed, the sole benefit of the original benefit of

concurrent duty."

The evidence shows that the first act of extreme

extreme took place on July 4, 1937, and that this extreme

took place on July 4, 1937, and it is stated for the

defendant that it was not known that in the interim

thing transpired in their domestic relations which could be looked upon as other than normal and as giving just grounds for the inference that the former acts of cruelty had not been condoned. In the view we take of the evidence, however, that inference is not justifiable. The evidence shows that both husband and wife were hard working people, and that the wife, as well as the husband, worked out for wages most of the time; that she not only worked out for wages, but at the same time took care of their home and fulfilled her domestic duties and gave birth to a child. Counsel for the defendant stated on the trial, "We will admit, to save time, that she was a good wife." But the evidence shows, according to her testimony, that he was mean and cruel to her generally, and illustrating what took place after the cruelty of July 4, 1932, she testified, "I remember one time, I guess it was in 1932, about in September, * * * when he was mean to me * * * we had arguments on account of my friends that came from Rockford. He refused to eat at that time. He was mean to me. I lay on the floor, I didn't want to hear those arguments, and he hollered * * * and swore at me. He called me all kinds of names. * * * I lay on the floor and asked him, 'Why should you be so mean to me?'"

She further testified, when asked if she remembered any particular date or dates that those things happened, as follows: "I remembermost every day when he hit me, and other days, you know, we have arguments, most every day when eating supper; sometimes it happens with the child and she used to do something with the papers and when he got home,

to see just that he used to be rough, and then I cry myself, and then come such happenings." Upon describing the events on July 4 and September 15, 1922, and being asked if she remembered any other date, she answered, "Well, I remember that; I remember we had it mostly about twice a week, such argument, since we married." She further testified, when asked how her husband treated her just before they sold their property on May 29, 1923, that "he was mean to me so much. He always swore at me. He used to be mean to me, and he would go away at nights and play cards.

Considering all the evidence as the record discloses it, we are impelled to the conclusion that although she did not separate from him until June 6, 1923, and although the last specific act of extreme cruelty occurred on July 4, 1922, and that in the interim they lived together as husband and wife, it would not be unreasonable to hold that condonation had taken place. She lived with him after the cruelty of July 4, 1922, until June 6, 1923, but with the evidence as it is, we do not feel entitled to override the decree of the Chancellor that the husband was guilty of cruel conduct, although not of as extreme a character as the particular acts above described, between those dates.

It is contended that the Chancellor erred in entering the supplementary decree of October 18, 1924. The decree ordered the defendant to pay the sum of \$200.00 for the reasonable solicitor's fees of the complainant, and \$52.50 for her expenses for court reporting. It is urged that the Chancellor did not have jurisdiction to make that order; but as the decree of divorce entered on September 29, 1924,

-1-

to see that he had to go away, and that I was really
and then some more things. "From December 15, 1937, and before that I was
on July 4 and December 15, 1937, and before that I was
registered and after that, the answer, "Well, I remember
last; I remember we had it nearly every time a week, and
exactly, "I don't know," the further back, when
and how her husband treated her just before they sold
their property on May 25, 1937, that "he was mean to me
so much. He always swore at me. He used to be mean to me,
and he would do any of these and any other.

Considering all the evidence as the record dis-
closes it, we are inclined to the conclusion that although
she did not receive from him until June 9, 1937, and
although the last receipt out of evidence clearly occurred
on July 4, 1937, and that in the interim they lived together
as husband and wife, it would not be unreasonable to hold
that consideration had been given. She lived with him after
the receipt of July 4, 1937, until June 9, 1937, but with the
evidence as it is, we do not feel entitled to overcome the
doubt of the Chancellor that the husband was guilty of
actual fraud, although not of an extreme character as
the Chancellor also might consider, between those dates.

It is concluded that the Chancellor acted in error
in the summary judgment of October 12, 1937. The
case ordered the defendant to pay the sum of \$200.00 for the
respondent's attorney's fees of the complaint, and \$12.50
for her expenses for court reporting. It is urged that the
Chancellor did not have jurisdiction to make that order;
and as the degree of blame attached on September 23, 1937,

reserved "for future disposition" the allowance to the complainant for solicitor's fees and court reporter's fees, that contention is not tenable. As to the amounts which the supplementary decree actually allowed, the evidence shows, considering the pecuniary situation of the parties and the services rendered by the defendant's solicitors, that the allowances were not unreasonable in amount. Such matters were within the sound legal discretion of the Chancellor; and considering the evidence, the relation of the parties, and their condition in life, we are unable to discover any sufficient reason for holding that there was an abuse of that discretion.

Finding no error in the record, the decree will be affirmed.

AFFIRMED.

THOMSON, P.J. AND MCCONNOR, J. CONCUR.

381 - 30234

HELEN N. COUFFER,

Appellee,

v.

GEORGE EDDY NEWCOMB,

Appellant.

APPEAL FROM

COUNTY COURT,

COOK COUNTY.

240 I.A. 664

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion
of the court.

On March 24, 1925, an order was entered in this
court consolidating this cause with Newcomb v. Newcomb,
General Number 30233, for hearing, and providing that the
record, files, abstract and briefs in the latter cause
should stand and be taken and considered as the record,
files and abstracts and briefs in the former cause.

On January 27, 1925, the plaintiff, Helen N.
Couffer, recovered a judgment in the sum of \$867.22 and
costs, against the defendant, George Eddy Newcomb. This
appeal is from that judgment.

We have this day handed down an opinion in
Newcomb v. Newcomb, General Number 30233, which is de-
cisive of this case, and which is here adopted as showing
the reasoning of the court applicable to the present case.

The judgment of the County Court, therefore, is
affirmed.
THOMSON, P.J. AND O'CONNOR, J. CONCUR. AFFIRMED.

2005

201 - 2005

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2401A 684

201 - 2005

Opinion filed Jan. 20, 1936.

THE COURT OF APPEALS

OF THE STATE

IN RE: THE ESTATE OF

JOHN J. HENRY, DECEASED

vs.

JOHN J. HENRY, JR.,

ADMINISTRATOR

OF THE ESTATE

OF JOHN J. HENRY, DECEASED

vs.

JOHN J. HENRY, JR.,

ADMINISTRATOR

OF THE ESTATE

OF JOHN J. HENRY, DECEASED

vs.

JOHN J. HENRY, JR.,

ADMINISTRATOR

OF THE ESTATE

OF JOHN J. HENRY, DECEASED

Helen M. Couffer, appellee, v. George Eddy Newcomb, appellant.

No. 30,235.

to the Municipal Court of Chicago;
from the Superior Court of Cook county;
County Court of county;

240 I.A. 664

, Judge, presiding. Heard

the Branch Appellate Court

this court

at the

term,

on authority of Dec. 11, 30333
and remanded with directions.

filed

Rehearing denied

for appellants.

for plaintiffs in error.

for appellees.

for defendants in error.

ING JUSTICE

delivered the opinion of the court.

record, files, abstracts and briefs in the former cause.

On January 27, 1925, the plaintiff, Helen M. Couffer, recovered a judgment in the sum of \$380.22 and costs, against the defendant, George Eddy Newcomb. This appeal is from that judgment.

We have this day handed down an opinion in Newcomb v. Newcomb, General Number 30333, which is decisive of this case, and which is here adopted as showing the reasoning of the court applicable to the present case.

The judgment of the County Court, therefore, is affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

These and other facts are in the following summary.

On January 17, 1951, the following information was received from the Bureau of the Census, Washington, D. C.:

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THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE

382 - 30235

HELEN H. COUFFER,
Appellee.

v.

GEORGE EDDY NEWCOMB,
Appellant.)

50/02
240 I.A. 664
APPEAL FROM

COUNTY COURT,

COOK COUNTY.

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion of
the court.

On March 24, 1925, an order was entered in this
court consolidating this cause with Newcomb v. Newcomb,
General Number 30233, for hearing, and providing that
the record, files, abstract and briefs in the latter
cause should stand and be taken and considered as the
record, files, abstracts and briefs in the former cause.

On January 27, 1925, the plaintiff, Helen H.
Couffer, recovered a judgment in the sum of \$980.22 and
costs, against the defendant, George Eddy Newcomb. This
appeal is from that judgment.

We have this day handed down an opinion in
Newcomb v. Newcomb, General Number 30233, which is decisive
of this case, and which is here adopted as showing the
reasoning of the court applicable to the present case.

The judgment of the County Court, therefore, is
affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

2010

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2401 A. 664

AMERICAN

COURT REPORT

BOOK NUMBER

WILLIAM H. WATKINS, JR.,

7.

GEORGE E. WATKINS, JR.,

Opinion filed Jan. 20, 1936.

THE COURT REPORTER DELIVERED THE OPINION OF

THE COURT.

ON JANUARY 24, 1936, AN ORDER WAS ENTERED IN THIS

COURT SUGGESTING THAT CASE NO. 10000 V. 10000

BE REMOVED FROM THE COURT, AND PROVIDING THAT

THE COURT, FILED, SUGGESTED AND ORDERED IN THE ORDER

THAT THE COURT SHOULD BE REMOVED AND SUGGESTED AS THE

COURT, FILED, SUGGESTED AND ORDERED IN THE ORDER

ON JANUARY 27, 1936, THE DISTRICT COURT OF

THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

ORDERED, AGAINST THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

ORDERED IN THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

IT IS ORDERED THAT THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

ORDERED V. DISTRICT COURT OF THE DISTRICT OF COLUMBIA, WHICH IS HEREBY

ORDERED, AND WHICH IS HEREBY ORDERED AS ORDERED THE

RECORDING OF THE COURT SUGGESTION TO THE DISTRICT COURT.

THE JUDGMENT OF THE DISTRICT COURT, THEREFORE, IS

ENTERED.

WATKINS.

THOMAS, J. H. WATKINS, JR.,

70756
191 - 10223

ESSIE J. NEWCOMB,

Appellee,

v.

GEORGE EDDY NEWCOMB,

Appellant.

APPEAL FROM

COUNTY COURT,

COOK COUNTY.

240 I.A. 664

Opinion filed Jan. 20, 1926.

MR. JUSTICE TAYLOR delivered the opinion of the court.

On March 24, 1923, an order was entered in this court consolidating this cause with Newcomb v. Newcomb, General Number 30233, for hearing, and providing that the record, files, abstract and briefs in the latter cause should stand and be taken and considered as the record, files, abstracts and briefs in the former cause.

On January 27, 1925, the plaintiff, Essie J. Newcomb, recovered a judgment in the sum of \$565.32 and costs, against the defendant, George Eddy Newcomb. This appeal is from that judgment.

We have this day handed down an opinion in Newcomb v. Newcomb, General Number 30233, which is decisive of this case, and which is here adopted as showing the reasoning of the court applicable to the present case.

The judgment of the County Court, therefore, is affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

5825a

IDA G. HOGG, Individually and
as administratrix of the estate
of LLOYD W. HOGG, deceased,
and GEORGE W. HOGG, a minor,
by IDA G. HOGG, his next friend,
Defendants in Error.

v.

JULIA CUMMINGS HOHMANN et al.,
Plaintiffs in Error.

240 I.A. 664
ERROR TO
CIRCUIT COURT,
COOK COUNTY.

MR. PRESIDING JUSTICE BARNES
DELIVERED THE OPINION OF THE COURT.

By this writ plaintiff in error, Julia Cummings Hohmann, seeks the review of a decree against her in a suit in chancery brought by the widow of Lloyd W. Hogg, deceased, as administratrix of his estate, and by his minor son, to recover property alleged to belong to his estate. Two other defendants, George Hohmann, the divorced husband of Julia Cummings Hohmann, and Theodore P. Keller, her son-in-law, have appealed, and the several cases have been consolidated for hearing upon the same record.

The evidence was heard by the chancellor whose findings of fact were in accordance with the material allegations of the amended bill of complaint and the amendment thereto. The findings bearing upon the material facts at issue are substantially as follows: Said Hogg died August 4, 1921. On the 24th of March, 1921, he was the owner of 1,000 shares of the capital stock of the Anaconda Copper Mining Company in the form of 10 certificates for 100 shares each, of the value of about \$40,000. For several years prior to and up to the time of his death he suffered from a malignant tumor of the brain. On March 31, 1921, a surgical operation was performed and it was found that the tumor could not be removed, and on March 24, 1921, and for some time prior thereto until the time of his death he was not of sound mind and memory.

2250

1000 A. A. 600

TO THE
CITY OF
NEW YORK

THE CITY OF NEW YORK,
COUNTY OF NEW YORK,
IN SENATE,
JANUARY 1, 1901.
REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE.

THE LAND OFFICE
OF THE CITY OF NEW YORK.

THE LAND OFFICE OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK,
IN SENATE,
JANUARY 1, 1901.
REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE.

and was mentally incapacitated to care for and manage his own estate and affairs and his own property. For some years prior to and up to the time of his death the defendants Julia Cummings Hohmann, George Hohmann and Marion Hohmann Keller, the daughter of Julia Cummings Hohmann, were close personal friends of said Hogg in whom he reposed great confidence and trust, and that the said Julia Cummings Hohmann and said Kellers occupied a fiduciary and confidential relation towards him. On March 24, 1921, by reason of such relationship said Julia Cummings Hohmann obtained possession of said certificates of stock, then owned by and standing in the name of said Hogg and endorsed in blank by him, without paying or giving him any consideration therefor, and on said date they were delivered to William H. Yetman, husband of defendant Dorothy Yetman, and were reissued at the request of said Julia Cummings Hohmann in the name of William H. Yetman who endorsed and delivered them back to her. On April 16, 1921, she caused new certificates of stock to be issued to defendant Theodore F. Keller, her son-in-law, without any good or valuable consideration, which said Keller holds for her benefit. The court found that the certificates were never given and delivered by Hogg as a gift to said Julia Cummings Hohmann, as she and the Kellers claimed, but were his property at the time of his death.

The court further found that during the mental incapacity of said Hogg, Julia Cummings Hohmann by reason of the fiduciary relation aforesaid, became possessed of certain United States Government Bonds known as Liberty Loan Bonds, the property of said Hogg, of the value of \$100,000; and that after the filing of the original bill and an injunction had been issued and served on her she delivered to defendant Dorothy Yetman \$5,350 of said bonds without any consideration therefor, and that said ownership of all said bonds was in Hogg at the time of his death.

[illegible]

The decree ordered the surrender of said certificates of stock, and upon their surrender that new certificates therefor be reissued to the administratrix. The decree also enjoins and restrains the prosecution of a suit in the Circuit Court of Milwaukee County, Wisconsin, brought by Julia Cummings Hohmann against Dorothy Yetman for the recovery and possession of said \$5,250 of liberty bonds in the possession of the clerk of said court, in which suit said administratrix had intervened to assert her claim thereto, and enjoins and restrains Dorothy Yetman from asserting any right, title or interest therein, and orders Julia Cummings Hohmann to deliver within ten days to the administratrix all the remaining \$94,750 of said liberty bonds, and on failure so to do gives complainant the right to apply for a judgment against her for their value with legal interest from the time of Hogg's death.

So far as Julia Cummings Hohmann, the plaintiff in error, is concerned the questions presented relate to her claim to said 1000 shares of stock and to liberty bonds that came into her possession, the amount of which is also in controversy. Appellant Theodore P. Keller is interested only as holder of said certificates of stock in which he claims no personal interest, admitting that he holds them for the use and benefit of plaintiff in error, and hence the merits of his appeal depend upon the disposition of the writ of error.

The appeal of George Hohmann is from that part of the decree finding and adjudging him indebted to the estate for \$26,831.67 and authorizing an execution therefor. The merits of his appeal will be considered in a separate opinion. The Yetmans were defaulted and were called as witnesses by complainant.

The answer of Julia Hohmann took issue upon the main facts as alleged in the bill and found in the decree, denying that Hogg became of unsound mind and mentally incapable, as

aforesaid, and that she had received any property whatsoever from him without good and valuable consideration therefor. It averred that the Anaconda stock was delivered by him to her long prior to March 24, 1921, that she was the owner and possessor thereof, and that the new certificates were issued in the name of Theodore Keller as her agent and representative, and delivered by him to her. Keller's answer admitted that the transfer was for her use and benefit. Her answer denied having transferred to Dorothy Yetman any property received from the deceased, Lloyd W. Hogg, or having assigned to her liberty bonds in the amount of \$5,250, and averred that she has received no property whatsoever from the said Hogg "without good and valuable consideration therefor." The answer also denied the general charge in the bill that defendants came into possession of other securities and bonds, (not described in the bill as to their character or amount) after decedent became mentally incapacitated as aforesaid.

We are asked to hold that the chancellor's findings are manifestly against the weight of the evidence. It is impracticable and unnecessary to review at length the testimony covering, as it does, nearly 2500 pages of the record.

The principal points of controversy were as to the mental state of said Hogg, the ownership of, and when and how plaintiff in error became possessed of the Anaconda stock and liberty bonds, and the amount of the latter.

On a post-mortem examination it was found that the deceased had a large glioma tumor which occupied the entire left occipital lobe of the brain and encroached forward into the temporal lobe. It was at least three and perhaps four inches in diameter and had calcified spots in the center which indicated that it had been there for many months. Such a tumor grows through the normal brain tissue and extends further than can be seen without the aid of a magnifying glass. It was found on an operation performed on

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the left side of his head on March 31, 1921, that the tumor could not be removed. Complainant's evidence tended to show that as far back as 1917 his conduct on occasions became unusual, that his character commenced to change, and a change of conduct towards his wife and child became marked. These symptoms increased down to February 1, 1921, when he was seized with violent and constant headaches, after which time he was unable to carry on a continued conversation because of his inability to use or recall words, and was unable to transact business. In answer to a hypothetical question based upon these and other facts, unnecessary to enumerate, several doctors gave it as their opinion that the deceased was not competent to transact ordinary business from the latter date to the time of his death, which happened August 4, 1921, from an accident having no bearing on the issues of the case. An equal number of doctors and even more lay witnesses called by plaintiff in error testified to a contrary opinion. We see no reason for entering into a discussion upon the relative weight of such testimony, which depended, we think, very largely upon the impressions the court received from the testimony of those having scientific knowledge of the disease. As to the findings on this and other controverted questions, which depended upon the character, appearance, deportment, experience and credibility of the witnesses, with respect to which the chancellor, as so frequently stated, is in a much better position to reach conclusions than we are. Not being able to say the chancellor's findings are against the weight of the evidence so far as they relate to the mental incapacity of the deceased, the fiduciary relation between him and plaintiff in error, her dominant influence over him during such relationship, and his ownership of said stock and of the \$5,250 of liberty bonds, we shall not undertake to discuss the voluminous evidence or disturb the findings on those subjects.

[illegible]

The transfer of the Anacosta stock, as stated, is not disputed. Only the ownership thereof is questioned. While the evidence for plaintiff in error tended to show that Hogg made her a gift of the stock in 1919, and she disclaimed having received any bonds from Hogg, the evidence for complainant tended to show that she came into possession of such stock and bonds of an uncertain amount while Hogg was thus mentally incapacitated, and her testimony in the Wisconsin suit as to how she came in possession of said stock was wholly at variance and inconsistent with her testimony in the instant case on that subject. In the former she testified that the stock came to her in a settlement made with her husband in lieu of alimony. In the instant case she testified it was a gift from the deceased. Her contradictory statements under oath on such an important matter might well justify rejection of her other testimony on disputed questions. And in this connection it should not escape observation that she made no claim of a gift in her answer. While her failure so to do was a breach of the rule in chancery which requires defendant's answer to apprise complainant of the nature of the defense (Crone v. Crone, 180 Ill. 606), the reservation of her claim of a gift until trial was not calculated to inspire confidence in the sincerity of her defense.

That a fiduciary and intimate relation existed between her and Hogg for a long period of time prior to his death and that they were much together in the last few months of his life are hardly matters of controversy. The inference is palpable, too, that she exercised a dominant influence over him and particularly after his mind was weakened from disease in the last year of his life.

While there was conflicting evidence as to when she came into possession of the stock and bonds we think the evidence, especially in view of the contradictory statements of plaintiff in error above referred to, justifies the court's findings thereon, and that it was sufficient to raise the presumption that if there

[illegible]

was a gift of the stock or bonds it was obtained by improper means, thus throwing upon her the burden she did not sustain of proving that it was his free and voluntary act. (Beach v. Wilton, 244 Ill. 413, 423; Millard v. Millard, 231 id. 86, 93; Gilmore v. Lee, 237 id. 402, 411; Rutherford v. Schneider, 307 id. 23; Berthelet v. Isaacson, 278 Fed. 923; Haydock v. Haydock, 34 N. J. Eq. 570, 574; Houghton v. Houghton, 15 Beav. 278, 298; 51 Eng. Reprint 553; Cooke v. Lamotte, 15 Beav. 234.)

"Whoever alleges a gift must prove it satisfactorily; a doubtful case will not do." (Doty v. Wilson, 47 N. Y. 580, 585.) It was said in Hors v. Petersen, 261 Ill. 532, and again in Beach v. Wilson, *supra*, that when a confidential or fiduciary relation is established between parties courts of equity scrutinize very closely any transaction between them by which the dominant party secures any profit or advantage at the expense of the person under his influence. In such a case, the court said, proof must be clear and convincing and satisfy the conscience of the chancellor that good faith has been exercised, and that the confidence reposed in the beneficiary has not been betrayed. Especially will evidence of alleged admissions by a deceased person be received with great caution. (Laurence v. Laurence, 164 Ill. 367; Bragg v. Geddes, 93 Ill. 39.) It is mainly upon evidence of decedent's alleged admissions that plaintiff in error relies for corroboration of her testimony of a gift. "Claims of this character are so open to fraud, so liable to be made especially against the estates of deceased persons, when there is little foundation for them that courts will not regard them with favor and will not sustain them unless fully proved; in other words, there is no presumption in their favor." (Burton v. Bridgeport Bank, 52 Conn. 398, 403.)

In Cooke v. Lamotte, *supra*, it was said that the relation in which domination may be exercised by one person over another may be said to apply to every case in which two persons are so situated "that one may obtain considerable influence over the other." There

a gift of the stock or bonds is now effected by testamentary means,
a disclaimer upon the part of the donor and the donee is not sufficient to prevent the
tax. See Rev. Rul. 55, 1935, 10-11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

whereas the donor is not a resident of the United States at the time of the gift,
the gift is not taxable. See Rev. Rul. 55, 1935, 10-11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

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can be little doubt of such a relation from the evidence in this case. Not only does such a confidential relation give cause for suspicion but as said in Beach v. Wilton, supra, all transactions between parties in that relation are presumptively fraudulent and void. The court also said: "The fiduciary relation exists between parties where there is a relation of trust and confidence between them, - that is, where confidence is reposed in one party and the trust accepted by the other." The term is a very broad one. (Mayrand v. Mayrand, 194 Ill. 45.) In the latter case the court said: "The origin of the confidence and the source of the influence is immaterial. The rule embraces both technical fiduciary relations and those informal relations whenever one man trusts in and relies upon another. The only question is does such a relation exist?"

As shown by evidence, which we think the court was justified in accepting as true, the conduct of plaintiff in error from the time Hogg's condition became apparent after the operation upon his skull until his death, disclosed great anxiety and a purpose to cover up and conceal her possession of said stock and bonds and to place them beyond the reach of decedent's estate in case of his death. This attitude was displayed after his death and the commencement of this suit, and her contradictory statements as to how she became possessed of the stock, which tend to discredit her entire testimony, her efforts to avoid service in the suit and openly meet issues that brought her character and integrity into question, her unsatisfactory explanations - these and many other matters of detail are inconsistent with honest purposes and her claim that the stock was a gift to her some two years before decedent's death.

It is true that the court's findings depend much upon the evidence furnished by the Yetmans. While their testimony is severely criticised, yet they had no real personal interests to subserve, at least to the extent plaintiff in error and her family

the little lamb of whom a relation from the evidence in this
... not only have such a substantial relation give some
... relation but as well in Smith v. Smith, all transactions
... were parties to that relation the promissory instrument and
... the same also with "the liability relation exists between
... also where there is a relation of trust and confidence between
... - that is, where confidence is reposed in one party and the
... is warranted by the other." The law is a very broad one,
... Smith v. Smith, 10-11, 65. In the latter case the court
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As shown by evidence, which we think the court was justified
... according to law, the conduct of defendant in error was
... a bank's confidence became apparent after the expiration of his
... it will be found, disclosed great fraud and a purpose to cheat
... and conceal but possession of said stock and bonds was placed
... beyond the reach of defendant's reach in view of his death.
... relation was dissolved after his death and the same cannot
... this rule, and our attention is directed to the fact that the
... of the bank, which was to be dissolved, has entire autonomy,
... effort to avoid it in the suit and openly used means that
... legal character and integrity into question, but notwithstanding
... relations - these and many other matters of detail are immaterial
... in defendant's papers and his claim that the stock was a gift to
... more two years before the bank's death.

It is true that the bank's relation existed with whom
... relations terminated by the payment. The bank's relation is

very material, but they had no real personal interest in
... as it is the correct principle in error and not really

had, and the motives ascribed to them by counsel for plaintiff in error, while a proper subject for consideration, cannot reasonably be deemed such as would induce them to fabricate the many details, facts and circumstances to which they testified. Besides many of them harmonize with circumstances, times and places that are not questioned. Their testimony as to many important facts was denied only by plaintiff in error and her daughter and her son-in-law, whose interest in the outcome of the case was large and vital. After a thorough review of the evidence, we think the court may well have accepted the testimony of the Yetmans as against the interested and discredited testimony of plaintiff in error.

But the finding of the court of plaintiff in error's liability for the additional \$94,750 of bonds rests wholly upon alleged statements of plaintiff in error that she had access to decedent's vault and had taken \$100,000 of liberty bonds therefrom, which he would want her to have if anything happened to him. Outside of such statements or admissions there was no direct or persuasive proof that more than \$5,250 of bonds came into her possession. The Yetmans did not pretend to have seen the denominations of the bonds in her possession except once when a package of reputed bonds disclosed a \$1,000 bond on top. The package was in an envelope 12 inches long and about 2 inches thick. Even if the bonds were of the denomination of \$1,000 each it is questionable whether one hundred of them could have been placed in an envelope of that size. But there was no proof of bonds of any larger denomination or in fact that the deceased ever had \$100,000 of such bonds, or in fact that he had any in the last year of his life. The fact that the disposition of his large fortune could not be accounted for and that he left less than \$1,000 in his bank, and that he had a deposit therein in April, 1921, of over \$86,000, and that his large income of over \$100,000 a year for four or five

years prior to the year of his death had in some way disappeared will not, in the absence of some direct proof on the subject, warrant, in our opinion, basing the specific finding against plaintiff in error as to the \$94,750, or a judgment against her for that amount. All the evidence with regard to her possession of liberty bonds, except her alleged but contradicted statements as to \$100,000 worth, is consistent with her possession of only the bonds she delivered to Dorothy Yetman. While she introduced evidence to the effect that the latter bonds were purchased by her, yet the circumstances attending her disposition of them when considered with her various statements regarding how and when the bonds came into her possession, justified the court's finding that they belonged to decedent.

It appeared, too, that decedent drew the dividends on the stock after the time plaintiff in error claimed he gave her the certificates, and that he had access to her vault in which she claimed to have kept the stock and from which she took it to be transferred in the name of Yetman. The arrangement for the transfer occurred after the operation on decedent's skull, and while he was still in the hospital. She was reported to have said then that if anything happened to Hogg he would want her to have the stock. All this is inconsistent with a gift inter vivos. "It is essential to such a gift that it be absolute and irrevocable; that the giver part with all present and future dominion over the property given; that the gift go into effect at once, and not at some future time; that there be a delivery of the thing given to the donee, and that there be such a change of possession as to put it out of the power of the giver to repossess himself of the thing given." (People v. Osentos, 275 Ill. 406; Telford v. Patton, 144 Ill. 611.)

It was also said in Rothwell v. Taylor, 303 Ill. 230, that "mere possession by one claiming property as a gift after the death of the owner, is universally, we believe, held in-

It was also held in Wheeler v. Taylor, 100 Ill. 405, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 254

sufficient to prove a valid gift."

Counsel for plaintiff in error invoke the application of section 5 of the Uniform Stock Transfer Act (See Ch. 32, par. 233, Cahill's Stats. 1925,) that the delivery of the certificates in accordance with section 1 of that act is effectual, except as provided for in section 7 of the act, to transfer the title. But there are two exceptions in said section 7 applicable to this case; (1) where the delivery is procured by fraud, - which would be presumed under such circumstances as appear in this case, - and (2) where the delivery is made after the owner's legal incapacity.

It is urged that the court improperly rejected offered proof to the effect that plaintiff in error had stated to different witnesses, prior to the time she disclosed her possession of the stock to the Yetmans, that she owned the stock, and counsel referred to the case of Martin v. Martin, 174 Ill. 377, in support of that position. If the court improperly rejected such proof we cannot deem it reversible error, for if the court would not accept plaintiff in error's sworn statement as to her ownership of the stock it is difficult to see how it could have been influenced by her unsworn statements made in circumstances that had no real probative force to support them.

Nor do we think there was reversible error in not permitting the daughter of plaintiff in error, called to rebut certain conversations testified to by the Yetmans, to testify to matters as a part of said conversations that had no material bearing on the questions at issue and which had no legitimate relation to the testimony given by the Yetmans.

We fail to find any reversible error except the finding respecting the amount of the liberty loan bonds that came into possession of plaintiff in error.

[illegible]

The decree will be affirmed in all respects so far as it pertains to plaintiff in error except so far as it requires her to deliver to the clerk of the court the remaining \$100,000 of liberty loan bonds and coupons attached thereto, in the amount of \$94,750, and authorizing on her failure so to do a judgment against her for the latter sum with interest from the 4th day of August, 1921.

AFFIRMED IN PART AND REVERSED IN PART,
AND REMANDED.

Oridley and Fitch, JJ., concur.

5826a

IDA G. HOGG et al.,
Complainants and Appellees.

v.

JULIA CUMMINGS HOHMANN et al.,
Defendants.

240 I.A. 664

APPEAL FROM

CIRCUIT COURT,
COOK COUNTY.

On appeal of GEORGE HOHMANN,
Appellant.

MR. PRESIDING JUSTICE BARNES

DELIVERED THE OPINION OF THE COURT.

This appeal is from a decree finding that appellant George Hohmann is indebted to the estate of Lloyd W. Hogg for \$26,821.67, principal and interest, and ordering him to pay said amount to the administratrix of said estate.

The bill of complaint, as finally amended, charges that in 1920 he borrowed \$22,000 from said Hogg and gave his promissory note therefor. The bill also charges that defendant Julia Cummings Hohmann before the death of said Hogg came into possession of certain certificates of the capital stock of the Anaconda Copper & Mining Company and of certain bonds, without giving any consideration therefor, which belonged to said Hogg and are the property of his estate; that the stock was transferred to her son-in-law Theodore P. Keller for her use and benefit and stands in his name. The decree ordered the surrender and re-transfer of said stock and the delivery of said bonds to said administratrix. The bill further charges that appellant entered into a conspiracy with defendants Julia Cummings Hohmann, Theodore P. Keller and Marion Hohmann Keller to cheat and defraud said estate out of said stock and bonds and his alleged debt. The decree, however, finds that George Hohmann did not enter into such

conspiracy but merely that he was indebted as aforesaid and that Hogg never released or forgave the debt, as he claimed, and orders payment of the same to said estate and that said administratrix have execution on the judgment.

We think the court below erred in not dismissing the bill for want of equity as to said appellant. In the absence of any proof of conspiracy he was not in anywise connected with the causes of action against the other defendants. The only attempt to connect him with them was by said charge of conspiracy. The court's finding to the contrary left as the only charge against him found to be proven the existence of such indebtedness, which presented a cause of action, for which complainant had an adequate remedy at law. The rule has often been repeated that a party can have no standing in a court of equity who has a plain and adequate remedy at law. (Gore v. Kramer, 117 Ill. 143, 151.) The mere fact that the alleged promissory note could not be found did not furnish ground for equitable relief. Section 14 of our Negotiable Instrument Act (Ch. 38, R. 5.) recognizes the right to bring an action at law on a lost note, and the common law rule which permits actions at law on lost notes or instruments has often been enforced in courts of this State. (O'Neil v. O'Neil, 123 Ill. 361; Devine v. Bickel, 129 Ill. App. 116; Siegel v. Dickinson, 163 id. 26; Petrus v. Waken & McLaughlin, 99 id. 463; Fleet v. Hertz, 98 id. 564; Edler v. Uchtmann, 10 id. 488.)

In Brauer v. Laughlin, 235 Ill. 265, where there was a recovery in a chancery case upon a purely legal demand, as in the case at bar, the court said:

"Courts will not permit parties to sue in chancery, and upon failure to establish a basis for equitable relief have the bill retained for the purpose of a recovery upon a purely legal demand. To allow this to be done would be to deprive the defendant of his constitutional right of trial by jury. * * * We have held that a court of chancery has power, where any equitable conditions exist authorizing it, in order to do complete justice between the parties, to enforce legal as well as equitable rights, but the equitable

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the following is a list of the names of the persons who have been appointed to the various committees of the Board of Directors of the American Red Cross Society, for the year 1917-1918.

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, for the year 1881:

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| Secretary of the Interior
John W. Foster | Commissioner of the General Land Office
John W. Foster | Commissioner of the Bureau of Indian Affairs
John W. Foster | Commissioner of the Bureau of Reclamation
John W. Foster |
| Commissioner of the Bureau of Fish and Game
John W. Foster | Commissioner of the Bureau of Geology
John W. Foster | Commissioner of the Bureau of Land Management
John W. Foster | Commissioner of the Bureau of Mines
John W. Foster |
| Commissioner of the Bureau of Natural History
John W. Foster | Commissioner of the Bureau of Public Lands
John W. Foster | Commissioner of the Bureau of Surveying and Mapping
John W. Foster | Commissioner of the Bureau of Waterways
John W. Foster |

TO THE HONORABLE SENATE OF THE UNITED STATES
IN SENATE, JANUARY 10, 1894.
REPORT
OF THE
COMMISSIONER OF THE GENERAL LAND OFFICE,
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 1, 1893.

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States. The Commission is therefore unable to determine whether the CLPE is a genuine organization or a front organization for the Soviet Union.

conditions authorizing it depend upon the proof and not upon the bare allegations of the bill."

It was also said in Tarr v. Stearman, 264 Ill. 110:

"Allegations in a bill upon which chancery jurisdiction might be maintained but which are not proved on the trial and upon which no relief is decreed, will not authorize a decree on such parts of the bill which, if standing alone, would not give the court jurisdiction."

What was said in those cases is applicable here. There was no proof whatever of equitable conditions charged in the bill by which George Hohmann was made a party thereto. As far as he is concerned the findings of the court are merely to the effect that he was liable to the estate of said Hogg for an unpaid indebtedness incurred to the latter in his lifetime.

On the question of equity jurisdiction in such a case counsel for appellees have cited many cases where resort to equity was had on lost sealed instruments because proof was necessary and oyer was allowed at law, or on negotiable securities because of the necessity of tendering indemnity which could not at common law be furnished in a legal proceeding. But equity will not entertain jurisdiction for relief upon a lost negotiable note, or other unsealed security, so as to decree payment upon the mere fact of loss. (Story on Eq. Jur. 14 Ed., secs. 136, 137.) As said by the author cited, there would be no necessity for an offer of indemnity if the note was not negotiable and consequently no relief could be had in equity. A fuller statement of these distinctions is unnecessary here. They are also referred to in Pomeroy's Eq. Jur. 4th Ed., sec. 71. But in the case at bar there is no averment that the note was even negotiable nor does the bill make any offer of indemnity. It is very clear that only an action at law would lie upon the note in the absence of any averment supported by proof that confers equity jurisdiction.

The merits of the case we need not discuss for if complainants are entitled to any relief they must resort to a

THE UNIVERSITY OF CHICAGO PRESS

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There is no doubt that the Government is entitled to the same treatment as the private citizen in the matter of the right of privacy. The Government is not a private citizen and it is not entitled to the same treatment as the private citizen. The Government is a public body and it is entitled to the same treatment as the public body. The Government is not a private citizen and it is not entitled to the same treatment as the private citizen. The Government is a public body and it is entitled to the same treatment as the public body.

On the question of liability in tort it is well known that the law is not uniform. In some jurisdictions the liability of a person who is injured by the negligence of another is determined by the law of the place where the injury occurred. In other jurisdictions the liability is determined by the law of the place where the defendant resides or where the cause of action arose. In still other jurisdictions the liability is determined by the law of the place where the plaintiff resides or where the injury was suffered. The law of the place where the injury occurred is the most common rule, but it is not universal. The law of the place where the defendant resides is also a common rule, but it is not universal. The law of the place where the cause of action arose is a less common rule, but it is not universal. The law of the place where the plaintiff resides is a very rare rule, but it is not universal. The law of the place where the injury was suffered is a very rare rule, but it is not universal. The law of the place where the injury occurred is the most common rule, but it is not universal. The law of the place where the defendant resides is also a common rule, but it is not universal. The law of the place where the cause of action arose is a less common rule, but it is not universal. The law of the place where the plaintiff resides is a very rare rule, but it is not universal. The law of the place where the injury was suffered is a very rare rule, but it is not universal.

court of law to obtain it.

Counsel for appellees urge upon our consideration that the chancellor's finding that there was no such conspiracy as alleged was against the weight of the evidence. Surely they cannot be unmindful of the familiar rule which precludes consideration of such question in the absence of filing cross errors.

The decree must, therefore, be reversed so far as it undertakes to enter a judgment against appellant George Nehmann, and the cause remanded with directions either to dismiss the bill as to defendant George Nehmann or in the discretion of the court to transfer the suit as to him from the chancery docket to the law docket as provided by section 40 of the Practice Act.

REVERSED AND REMANDED WITH DIRECTIONS.

Gridley and Fitch, JJ., concur.

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Counsel for appellees urge upon our consideration that the chancellor's finding that there was no such conspiracy as alleged was against the weight of the evidence. Surely they cannot be unmindful of the familiar rule which precludes consideration of such question in the absence of filing cross errors.

The decree must, therefore, be reversed so far as it undertakes to enter a judgment against appellant George Hohmann, and the cause remanded with directions to dismiss the bill as to defendant George Hohmann.

REVERSED AND REMANDED WITH DIRECTIONS.

Gridley and Fitch, JJ., concur.

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THE FIRST ITALIAN STATE BANK,
a corporation,
Defendant in Error,

v.

FRATELLI CANNATO,
Plaintiff in Error.

ERROR TO
MUNICIPAL COURT
OF CHICAGO.

240 I.A. 664

MR. PRESIDING JUSTICE BARNES
DELIVERED THE OPINION OF THE COURT.

On September 11, 1924, a judgment by confession under power of attorney attached to a note was entered against "Fratelli Cannato." Said note was signed in the names of Mario Avallone and Fratelli Cannato as makers thereof. On March 19, 1925, a motion was made to vacate such judgment based on the affidavit of Joseph Cannato, setting forth that he was the sole owner of a business conducted under the name of "Fratelli Cannato;" that he never signed or authorized the signature to said note of "Fratelli Cannato;" that he is informed that said note was signed by said Avallone, but that the same was signed without his knowledge and without any obligation on his part or any authorization by him; that garnishment proceedings were had upon said judgment against the bank account in the name of "Fratelli Cannato," and that he had no knowledge of these proceedings or the judgment on account of his absence on a business trip to Italy, from which he had only shortly returned before making said motion. The court denied the motion, but we think under its equitable power in such a case it should have opened up the judgment and permitted a defense, allowing the judgment to stand in the meantime as security. For error in denying the motion

the judgment will be reversed with directions to open up the same to permit such defense, the judgment to stand in the meantime as security. (Kloockner v. Schafer et al., 110 Ill. App. 391.)

REVERSED AND REMANDED WITH DIRECTIONS.

Gridley and Fitch, JJ., concur.

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155 FIFTH AVENUE
NEW YORK, N. Y. 10011

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5828a

WARTBURG PUBLISHING HOUSE,
a corporation,
Plaintiff in Error.

v.

R. E. SHEPHERD,
Defendant in Error.

ERROR TO

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 665

MR. PRESIDING JUSTICE BARNES

DELIVERED THE OPINION OF THE COURT.

Plaintiff in error sued defendant in error for the cost of printing a book called "Is Your Neighbor a KuKluxer." The trial was without a jury, and the court entered a finding and judgment in favor of defendant. The usual motions were made and denied, and this writ seeks reversal of the judgment.

The main contention is that the finding is against the weight of the evidence.

Plaintiff called two witnesses, LaVey, who solicited the order from defendant, and Lischer, its foreman, who made the estimate of the cost and concluded the oral contract for the work. Defendant was his only witness. There was no dispute as to most of the facts. LaVey testified that when he went to Shepherd to procure the order the latter handed him a sample book bearing said title and wanted him to get an estimate of the cost of printing 5,000 copies; that he took it to Lischer for an estimate which was made at \$410 and returned to Shepherd; that the latter after receiving it gave LaVey the order with the request that "it be done in a hurry;" and on the next day handed him several boxes containing cards on which were written names, addresses, etc., saying he wanted such names, etc., inserted in the new book; and thereupon LaVey took the cards to Lischer and informed him of defendant's desires. This terminated his connection with the matter.

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Plaintiff in error and defendant in error for the
 of printing a book called "The Young Republic" in
 trial was before a jury, and the court entered a finding
 judgment in favor of defendant. The usual reasons were made
 known, and this was again affirmed of the judgment.
 The main contention is that the finding is against
 weight of the evidence.
 Plaintiff called two witnesses, Levy, who testified
 every from defendant, and Jackson, the former, who made the
 some of the text and concluded the trial without for the
 defendant was his only witness. There was no dispute as
 to the facts. Levy testified that when he went to
 work to procure the paper for the paper he had a number of
 the said title and wanted him to get up volume of the work
 which he had copied; that he took it to Jackson for an
 order which was made at \$100 and returned to Jackson; that
 latter after receiving it gave Levy the order when the paper
 "it be done in a hurry," and on the next day handed him several
 a containing order on which were written names, addresses, etc.,
 and he signed each name, etc., delivered in the new book; and
 when Levy took the order to Jackson and returned him it

Lischer corroborated his evidence that he brought only the sample book for the estimate and the cards after the estimate was given, and testified that after the cards were brought to him he called up Shepherd on the telephone and told him the new book would be "much bigger," that it would contain 128 pages, whereas the old book had 64; that Shepherd then told him to put it in smaller type, whereupon Lischer said that would reduce the size but increase the cost, and defendant replied, "go ahead, he was in a hurry for the book."

The book was printed and contained 103 pages, for which the fair and reasonable and customary charge, as testified to and not questioned, was \$325.61.

Defendant paid \$205 on the bill, and both pleaded and testified that he was willing to pay \$205 additional, the balance on the basis of said estimate. Said "balance," however, was not brought into court, and judgment should have been entered against defendant for said sum in accordance with section 55, ch. 116, (Sahill's Stats.) He further testified that he handed the cards to LaVey when he gave him the book, and while he admitted hearing the conversation testified to by Lischer, he denied that anything was said about "increased cost."

But we think there was a manifest preponderance of evidence in plaintiff's favor and that it was entitled to judgment for the full amount of its claim. Not only were there two witnesses against one on the disputed point when the estimate was made with reference to the order for the insertion of the contents of the cards, but the admitted parts of the conversation over the telephone tend strongly to corroborate the two witnesses to the effect that the estimate had been made and received before any suggestion was made with regard to including what was on the cards. Evidently the conversation was suggested by the very fact that the order to include additional material was made after receipt of the estimate.

Alaskan corresponded his evidence that he had only a sample from the entrance and the same after the entrance was closed and sealed and after the order was brought to him called up the record on the telephone and told him the law would be "seven days," and it would contain the record, whereas his book had 60; that therefore from him to get it in this type, therefore it is said that would reduce the law to seven days cost, and a statement replied, "he should, he was a hurry for the book."

1. The book was printed and contained 100 pages. The main title was "The History of the United States of America" and the subtitle was "A History of the United States of America from 1776 to 1876". The author was "The United States of America" and the publisher was "The United States of America". The book was published in 1876 and was the first of a series of books published by the United States of America. The book was published in 1876 and was the first of a series of books published by the United States of America.

...with the "Hundred Club".

It is a fact that the Commission has been unable to obtain any information from the Government of the United States regarding the activities of the Communist Party in the United States. The Commission has been unable to obtain any information from the Government of the United States regarding the activities of the Communist Party in the United States.

Otherwise there was seemingly no necessity for Lischer's calling up Shepherd, and it is far more consistent with business methods that a man in Lischer's position on receiving such order after making the estimate on the sample book alone should have spoken about the increased cost of printing additional matter. To think, therefore, the court should have entered the judgment for the full amount of plaintiff's claim, namely, \$620.61, which allowed credit for the payment of \$208.

Accordingly the judgment will be reversed and judgment entered here for that sum with costs of this court and in the court below.

REVERSED WITH FINDINGS OF FACTS
AND JUDGMENT HERE.

Gridley and Pitch, JJ., concur.

THE UNIVERSITY OF CHICAGO

Approved: _____ Date: _____

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FINDING OF FACTS.

We find that the estimate on which defendant in error claimed the parties hereto entered into a contract was not the basis of the contract, but that defendant in error ordered the printing of additional material to that considered in the estimate, knowing that the cost would be greater than stated in said estimate and without making any specific arrangement for the cost, and that said cost was \$825.61, on which defendant in error has paid \$205.

5829a

JOSEPH S. SWEENEY, Jr., a minor,
by Joseph S. Sweeney, Sr.,
Defendant in Error,

v.

FREDERICK O. CLAUSEN,
Plaintiff in Error.

ERROR TO

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 665

MR. PRESIDING JUSTICE BARNES

DELIVERED THE OPINION OF THE COURT.

The judgment under review was rendered on the verdict of a jury at an ex parte trial for \$1350 against plaintiff in error, the defendant below, in an action on the case. The first, third and fourth counts of the declaration were stricken on plaintiff's motion, and the judgment stood on the second count.

The only point made for reversal is that as the fourth or last count was the only one with a formal averment of the amount of the ad damnum, the judgment, being on the second count alone, cannot stand.

The final averment of the second count is "and sustained damages as alleged in the last count of this declaration." By this reference the formal ad damnum in the fourth count became a part of the second count, and the dismissal of the fourth count did not alter that fact for it still remained a part of the declaration for reference purposes. (Shaughnessy v. Holt, 236 Ill. 485, 487.)

The judgment is affirmed.

AFFIRMED.

Gridley and Fitch, JJ., concur.

205/2

20501

JOHN C. HANCOCK, JR., W. HANCOCK,
JOHN C. HANCOCK, JR.,
Defendant in Error.

JOHN C. HANCOCK, JR.,
Defendant in Error.

24017.062

JOHN C. HANCOCK, JR.,
Defendant in Error.

THE HANCOCK JUDICIAL BOARD
WILL REVEAL THE DECISION OF THE COURT.

The judgment under review was rendered on the 10th of
a copy of an affidavit for 1837 signed plaintiff in
the, the defendant's plea, in the action on the 10th. The
first, third and fourth counts of the declaration were divided
plaintiff's motion, and the judgment stood on the second count.
The only point made for reversal is that on the fourth
last count was the only one with a formal statement of the
fact of the affidavit, the judgment, being on the second count
and, plaintiff stand.

The final verdict of the second count is "not sustained"
as alleged in the last count of this declaration. It
is therefore the formal affidavit in the fourth count became a
part of the second count, and the dismissal of the fourth count
is not other than that it still remained a part of the
declaration for review purposes. (HANCOCK V. HANCOCK, 1837.)

The judgment is affirmed.

REVEREND.

JOHN C. HANCOCK, JR., W. HANCOCK,
Defendant in Error.

5830a

NATIONAL ELECTRIC CONTROLLER CO..
a corporation,

Appellant,

v.

HOWARD RADIO CO., a corporation,
A. A. HOWARD, G. E. WARREN and
T. J. SULLIVAN, partners, etc.,
Appellees.

240 I.A. 665
APPEAL FROM

MUNICIPAL COURT
OF CHICAGO.

MR. PRESIDING JUSTICE BARNES

DELIVERED THE OPINION OF THE COURT.

On the motion of defendants, plaintiff's amended statement of claim was stricken for insufficiency in that it did not state a legal cause of action against defendants. Plaintiff having elected to stand by the statement has appealed from the order dismissing the suit.

Plaintiff's claim is alleged to be for amounts due and owing under a certain contract in writing, a copy of which is attached to and made a part of the statement of claim. The original contract (Exhibit A) was executed June 1, 1922, and a supplementary agreement modifying it (Exhibit B) was executed February 1, 1923.

The main question presented is, what construction should be put upon the contract and supplementary agreement?

Exhibit A recites that plaintiff is the owner of a patent and of patented improvements in rheostats, and grants to the Howard Radio Company, "immunity from prosecution for patent infringement under said patent," subject to certain provisions not involved in this case.

The provisions of the agreement in the first two paragraphs of section B of Exhibit A, read as follows:

"B. In consideration of the Said Immunity, the party of the second part agrees to pay to the party of the first part or assigns, as follows:

1. The sum of Ten Cents for each and every Rheostat mentioned or enumerated in any report furnished or delivered by the party of the second part to the party of the first part on or before the fifteenth day of the month and which Rheostats were sold by the party of the second part during the preceding month, and in which report is set forth truly in detail for each transaction, the date, the name and address of the purchaser, and the number of rheostats; the said payment to be delivered to the party of the first part with said Report; Provided, however, that if the said payment is made in full and delivered to the party of the first part with said report on or before the fifteenth day of each month, then, in each such case, the party of the second part shall be entitled to a discount of fifty (50) per cent from the amount otherwise payable for that month by the party of the second part to the party of the first part on the rheostats so reported; the net payment due hereunder in each such case for such month being five cents for each and every rheostat reported instead of ten cents, as stated.

2. The sum of one dollar for each and every rheostat containing said patented improvement, sold or in any way disposed of or used, by the party of the second part, on or before the fifth day of November, A. D. Nineteen Hundred and twenty four (1924) provided said party of the second part fails or neglects to mention and enumerate said rheostat in a report furnished and delivered by the party of the second part to said party of the first part on or before the 15th day of the month following said sale, use or disposal; and the said sum of one dollar for each rheostat shall be payable by the party of the second part to the party of the first part upon demand in writing made by the party of the first part upon or to the party of the second part."

It is this quoted part of section B as modified by the supplementary agreement (Exhibit B) that calls for construction. The modification consists of adding to said B-1 the following clause:

"and that on rheostats made or sold during the month of January, 1923, and each month thereafter the said discount shall be eighty (80) per cent instead of fifty (50) per cent from the amount otherwise payable for that month by the party of the second part to the party of the first part on the rheostats so reported on or before the 15th day of each month provided the said payment is made in full and delivered to the party of the first part with said report."

Plaintiff's claim is made up as follows:

| | |
|-------------------------------------|------------|
| One dollar on each of 6214 sold in | |
| November, 1922..... | \$ 6214.00 |
| One dollar on each of 25206 sold in | |
| November, 1923..... | 25206.00 |
| Ten cents on each of 31209 sold in | |
| October, 1924..... | 3120.90 |
| Ten cents on each of 7103 sold in | |
| November, 1924..... | 710.30 |
| | <hr/> |
| Total..... | \$35251.20 |

Credits

| | | |
|------------------------------------|----------|---------|
| December 15th 1922 paid by check.. | \$312.30 | |
| December 17th 1923 paid by check.. | 504.12 | |
| November 24th 1924 paid by check.. | 766.24 | 1582.66 |
| | | <hr/> |

Balance due and payable.....\$33668.54

The facts upon which the first two items of the claim are predicated are that the Howard Radio Company did not report to plaintiff the sales made in November, 1922, until the 22nd of the following month, and of the sales made in November, 1923, until the 24th of the following month. It is plaintiff's theory that under paragraph 2 of section B it thus became entitled to be paid \$1.00 for each rheostat sold instead of the lesser sum mentioned in the contract, namely, 5 cents for each rheostat sold during the year 1922, and 2 cents each for those sold during the year 1923, after having credited payments made on the basis of the latter rates.

The facts upon which the other two claims are predicated are that while the reports of the sales made in the months of October and November, 1924, were made on the 15th of the month following the month when the sales were made the reports were not accompanied with any payment. Credit, however, is given for payment made November 19, 1924, which covers the sales for October and November at the rate of 2 cents for each rheostat, but appellant claimed the right to apply such credit on the first item of the account. In other words, plaintiff claims it is entitled to the maximum rates referred to in the contract by reason of

[illegible]

DATE: 12/10/1988 PAGE: 13

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1. The first step is to identify the problem or question that needs to be answered.

It is to be noted that the above information is not to be used for any purpose other than that for which it was furnished.

THE UNIVERSITY OF CHICAGO PRESS

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10. The above information is true and correct.

and I have been very much interested in the

1958

1. The first step is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

1. The first step is to identify the problem or question that needs to be answered.

THE YOUNG MAN WHO WAS BORN IN THE YEAR OF THE HORSE

TO: DIRECTOR, FBI (100-388610) FROM: SAC, NEW YORK (100-100000) (P)

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the above information was obtained from the records of the

THE UNIVERSITY OF CHICAGO PRESS

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

defendants' default to make reports and payments strictly on time, as provided for in the agreement.

While in construing the contract plaintiff makes subtle distinctions upon which we do not feel it necessary to elaborate in this opinion, we think the controlling question presented is whether such maximum rates should be regarded as a penalty or liquidated damages. The law on the subject, as laid down by the Supreme Court in a very similar case, that of Goodyear Shoe Machinery Co. v. Selz, Schwab & Co., 157 Ill. 186, seems to us conclusive of the question. It was there said: "Where a large sum, which is not the actual debt, is agreed to be paid in case of a default in the payment of a lesser sum which is the actual debt, such larger sum is always a penalty. * * * In doubtful cases courts are inclined to treat the stipulation as a penalty." Applying this principle the court said that the controlling question in that case was, as it is in this, "what did the parties intend should be the actual rental for the machines - which sum was to be the actual debt?" The agreement in that case provided, "that if the rents and royalties due on the first day of any month shall be paid on or before the 15th day of that month, it will, in consideration thereof, grant a discount of 50 per cent from the rents and royalties specified in the schedule aforesaid." Commenting on that provision the court said, "that a discount of 50 per cent should be made on the debt for a prepayment of about 15 days is contrary to all business experience, and most unreasonable." It said that inasmuch as not more than 50 per cent of the schedule rate was due and payable at any time between the first and 15th of the month, and as the presumed intention of the parties was to secure a reasonable compensation, to hold that it was intended that the rent should be a particular sum when due, and double that on the next day, "except as an inducement to prompt payment of the lesser sum," is unreasonable. The court construed the lesser sum

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to be the actual debt, and that the agreement to pay double the amount was in the nature of a penalty to insure prompt payment of the sum actually agreed to be paid.

We place a like construction upon the contract in the instant case. The smaller sum, on the basis of the lesser rates mentioned, must be considered as the actual debt, which seems to have been paid, though after the time contemplated by the agreement, and the provisions for the larger rates must be deemed in the nature of a penalty to insure prompt payment of the actual sum due. There is nothing in the statement of claim to show that plaintiff suffered any actual damages and nothing upon which to predicate a claim therefor.

In this view of the case we need not discuss whether the statement of claim shows a joint liability of defendants for the performance of the contract. Nor do we think it makes any difference whether the amount to be paid under the contract is regarded as a royalty or consideration from immunity from prosecution for patent infringement. The effect and substance of the contract are the same in either case. The real question is, what did the parties intend should be the actual payment or actual debt for the rheostats. The final phrase of paragraph 1, section B, "the net payment due hereunder," referring as it does to the rate of 5 cents, instead of ten cents, subsequently reduced to 2 cents, supports the construction that the amount due according to the lesser rate, constituted the actual amount due and, therefore, the actual debt. The larger sum was to be paid only in case of default, and which, according to the decision cited, and other cases therein referred to, must be construed as a penalty. The correspondence referred to in the statement of claim, attached as exhibits, indicates that plaintiff had received and accepted payments made on the basis of the smaller sum, and that after the contract had terminated it asserted its claim on the basis

the actual date, and that the agreement is a bona fide agreement and not a device to avoid payment of taxes.

It is also a like conclusion from the contract in the
last case. The contract was, on the basis of the last
clause, not to be considered as the actual date, which means to
be paid, though after the time contained by the agree-
ment, and the provision for the larger value must be deemed in
favor of a penalty to secure prompt payment of the balance
due. There is nothing in the statement of this to show that
it will be paid only when the balance is paid upon which the

[illegible]

of payments provided for in case of default, thus increasing its claim in some instances from 2 cents to \$1.00 on each rheostat. The very unconscionableness of the claim suggests that the above construction of the contract is a proper one.

AFFIRMED.

Gridley and Fitch, JJ., concur.

of the above investigation of the content in a given case. The first consideration of the claim requires a claim in some form from a date of \$1.00 or less. Examples are given for the case of a claim. The following

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PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

v.

JOSEPH SOLTIS,
Plaintiff in Error.

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 665

MR. PRESIDING JUSTICE BARNES
DELIVERED THE OPINION OF THE COURT.

Plaintiff in error was convicted of a misdemeanor without an arraignment or plea and was refused a trial by jury. That this state of the record necessitates a reversal of the judgment, involving, as such omission and refusal do, fundamental rights and elementary principles of practice, should require no citation of authorities. But the necessity of the former is stated in Parkinson v. People, 135 Ill. 401, 402, and the right to the latter is stated in Brewster v. People, 183 Ill. 143. Accordingly the judgment will be reversed and the cause remanded.

REVERSED AND REMANDED.

Gridley and Fitch, JJ., concur.

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THE STATE OF NEW YORK,
COUNTY OF NEW YORK.

v.

THE PEOPLE OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK.

IN SENATE,
JANUARY 10, 1910.

2401 A 665

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE
ON THE LANDS BELONGING TO THE STATE OF NEW YORK.

THE LANDS BELONGING TO THE STATE OF NEW YORK
ARE OF GREAT IMPORTANCE TO THE STATE AND TO THE PEOPLE
AND IT IS THE DUTY OF THE COMMISSIONERS OF THE LAND OFFICE
TO REPORT TO THE SENATE ON THE LANDS BELONGING TO THE STATE
AND TO THE PEOPLE OF THE STATE OF NEW YORK.
THE LANDS BELONGING TO THE STATE OF NEW YORK
ARE OF GREAT IMPORTANCE TO THE STATE AND TO THE PEOPLE
AND IT IS THE DUTY OF THE COMMISSIONERS OF THE LAND OFFICE
TO REPORT TO THE SENATE ON THE LANDS BELONGING TO THE STATE
AND TO THE PEOPLE OF THE STATE OF NEW YORK.
THE LANDS BELONGING TO THE STATE OF NEW YORK
ARE OF GREAT IMPORTANCE TO THE STATE AND TO THE PEOPLE
AND IT IS THE DUTY OF THE COMMISSIONERS OF THE LAND OFFICE
TO REPORT TO THE SENATE ON THE LANDS BELONGING TO THE STATE
AND TO THE PEOPLE OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF
ILLINOIS,

Defendant in Error,

v.

LOUIS HEISTINGER,

Plaintiff in Error.

ERROR TO MUNICIPAL

COURT OF CHICAGO.

240 I.A. 665

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Plaintiff in error was sentenced to the House of Correction upon his plea of guilty to an information charging him with operating an automobile on a public highway in Chicago while intoxicated, in violation of section 41 of the Motor Vehicle Act.

He first contends that the section of the statute mentioned is doubtful or conflicting in meaning "and impossible of elucidation." From the argument of his counsel, the point seems to be that "intoxication" may have several meanings, depending upon whether the cause of it is poison, or joy, or intestinal disturbances, or overindulgence in liquor. We find no such difficulty in construing the statute. The statute makes it an offense, punishable by fine or imprisonment in the County jail, or both, for any person to operate a motor vehicle upon any highway in this state "while drunk or intoxicated." The information omits the word "drunk," and merely charges defendant with operating such a vehicle "while intoxicated." The statute uses the word "intoxicated" as synonymous with the word "drunk." These words are synonymous if the intoxication is produced by strong drink. Unless qualified, that is the usual, ordinary sense in which the words are used, as a reference to any standard dictionary will show. The objection is without merit.

It is next objected that the written jury waiver which was filed in the Municipal court, does not state the name of the offense charged. Conceding this to be true, it is immaterial. The plea of guilty admitted all the material facts alleged in the information (Marx v. The People, 204 Ill. 248), and, in legal effect, waived the defendant's right to a jury trial. (Harris v. The People, 128 Ill. 585, 591.) Hence, there was no necessity for a formal jury waiver.

It is next insisted that neither in the finding of the court nor in the mittimus is there any statement of venue. Defects in the mittimus cannot be raised on a writ of error, as the mittimus is no part of the judgment (Marx v. The People, supra); and upon a plea of guilty the statute does not require that the court shall render any verdict, or shall (in any manner other than by a sentence) make a finding as to the facts of the case. (Ibid., 252.) However, the record of the judgment shows that the court did enter a finding that defendant is "guilty in manner and form as charged in the information herein," and the information states the venue.

It is finally urged that the Municipal court has no power to commit plaintiff in error to the House of Correction. The statute expressly provides the contrary. (Cahill's Ill. Stat. 1925, Chap. 67, Sec. 9.)

The alleged constitutional questions mentioned in the brief of counsel for plaintiff in error were waived by coming to this court and assigning errors which this court has power to consider and determine. (Luken v. L. S. & M. S. Ry. Co., 248 Ill. 377.)

The judgment is affirmed.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

[illegible]

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the South (CLPS) in the United States.

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It is likewise argued that the knowledge of the law is not a necessary condition for the exercise of the right of free speech. The knowledge of the law is not a necessary condition for the exercise of the right of free speech. The knowledge of the law is not a necessary condition for the exercise of the right of free speech.

THE ALABAMA DEPARTMENT OF REVENUE
COMMUNAL TAX DIVISION
HAS RECEIVED A RETURN FROM THE
TAXPAYER (NAME AND ADDRESS)
AND THE TAXES DUE ARE AS FOLLOWS:

• *Journal of the American Medical Association*, 1997; 277: 1001-1005

... ..

58 33a

THE PEOPLE OF THE STATE OF
ILLINOIS,
Defendant in Error.

v.

JOSEPH C. WOLON,
Plaintiff in Error.

ERROR TO CRIMINAL
COURT OF COOK COUNTY.

240 I.A. 66

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Defendant was convicted, in the Criminal court of Cook county, of conspiracy and sentenced to sixty days in jail. On this writ of error, he claims that the evidence against him was insufficient to justify the conviction and that certain prejudicial errors were committed in the admission of evidence.

In order that such alleged errors may be considered by this court, it was necessary to show the evidence and the rulings of the trial court by a proper bill of exceptions. (Mallers v. Whittier Machine Co., 170 Ill. 434; Kalish v. City of Chicago, 219 Ill. 133.) There appears in the record a document which is called an original bill of exceptions, but the typewritten certificate at the end of it, intended for the signature of the trial judge, is not signed, and the space left for the date is blank. Under this blank form of certificate, and on the same page, appears the following.

"The trial judge, Gemmill, being absent and not holding court, this bill of exceptions presented to me in open court for settlement and signature this 29th day of July, 1925.

Hosea W. Wells,
Judge."

Immediately below this statement is the file mark of the clerk of the Criminal court (the same date), and at the bottom of the same page the following is written: "Note - Exhibits not in bill of exceptions; otherwise it is O. K. W. N. Gemmill." When this memorandum was written does not appear. It may have

240 I.A. 666

STATE OF MINNESOTA
COUNT OF COOK COUNTY.

IN SENATE OF THE STATE OF MINNESOTA,
JANUARY 11, 1904.
REPORT OF THE
COMMISSIONER OF THE LAND OFFICE.

THE COMMISSIONER OF THE LAND OFFICE HAS THE HONOR TO REPORT TO THE SENATE OF THE STATE OF MINNESOTA, AS REQUIRED BY CHAPTER 10, SECTION 1, OF THE LAWS OF 1903, RELATIVE TO THE LANDS BELONGING TO THE STATE OF MINNESOTA.

THE LANDS BELONGING TO THE STATE OF MINNESOTA ARE DIVIDED INTO TWO CLASSES, TO-WIT: THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858, AND THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1892.

THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858 ARE DIVIDED INTO TWO CLASSES, TO-WIT: THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858, AND THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1892.

THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858 ARE DIVIDED INTO TWO CLASSES, TO-WIT: THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858, AND THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1892.

THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858 ARE DIVIDED INTO TWO CLASSES, TO-WIT: THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1858, AND THE LANDS BELONGING TO THE STATE OF MINNESOTA BY VIRTUE OF THE ACT OF 1892.

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been written before it was filed or weeks later, after the time allowed within which to file it had expired. It purports to show, not that the bill is correct and complete, but that it was neither, at the time the memorandum was written. At least one of the exhibits mentioned in the document is still missing, and we must therefore assume that after the trial judge's memorandum was written on it, the bill was never so corrected that it could be signed and certified to by the trial judge. As it stands, it is a mere draft of a proposed bill of exceptions which has never been completed, or certified and signed as such by any judge authorized to sign it, and is therefore not properly a part of the record. (People v. Rosenwald, 266 Ill. 548; In Re Est. of Martha Janett, 199 Ill. App. 13.)

The state's attorney has not made any motion to strike this so-called bill of exceptions from the record, but as the errors assigned relate wholly to matters that can only be made to appear by a bill of exceptions properly signed and certified as such by the trial judge, we have no power to review anything contained in the purported bill of exceptions. (Senger v. Pfeiffer, 199 Ill. App. 190) even though it improperly appears in the transcript. There is no assignment of error which calls in question any matter shown by the record apart from the purported bill of exceptions, and therefore the judgment must be affirmed, and it is so ordered.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

THE HOUSE OF REPRESENTATIVES
IN SENATE, FEBRUARY 15, 1911.
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
JANUARY 11, 1911.
ALBANY: J. B. LEECH, STATE PRINTER.
1911.

The above is a summary of the evidence presented in the report of the Committee on the subject of the proposed bill. It is not intended to be a complete statement of the facts, but only a summary of the evidence presented in the report. The Committee has not had the opportunity to hear the testimony of the witnesses named in the report, and therefore cannot make any statement as to the truth or falsity of the charges against them. The Committee has, however, heard the testimony of the witnesses named in the report, and has found that the charges against them are not supported by the evidence presented in the report. The Committee has, therefore, recommended that the bill be not passed.

• *Q. 1000*

... ..

5034a

INTERNATIONAL ACCOUNTANTS
SOCIETY, a corporation,
Appellant.

v.

JOHN A. SCHULER,
Appellee.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 666

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

By this appeal, plaintiff seeks, in effect, to obtain a new trial of an action on a note given by defendant in March, 1922, for \$140, for instruction in accountancy to be thereafter given by plaintiff. The defense was failure of consideration. The case was tried before a jury, which found the issues against the plaintiff. No brief has been filed by the defendant.

Plaintiff's abstract and brief make it appear that there was really no defense to the suit and that the court erred in refusing to direct a verdict for the plaintiff. An examination of the transcript, however, shows there was a good defense.

When the note was given, plaintiff agreed in writing - and this agreement was the sole consideration for the note - to furnish defendant with its "complete I. A. S. elective course," consisting of ninety lessons, of which the first ten were "fundamental accounting principles." For that purpose, plaintiff agreed to furnish defendant with "all necessary lesson and instruction material," in loose leaf form, with a convenient binder, each lesson to be complete in itself and to have an examination sheet attached to it. The agreement further provides that "when the student's examinations are received, they are carefully examined, criticized and graded by practicing certified public accountants and returned to him with a completely worked out model answer, with such personal criticism, counsel and advice as the student may require." The agreement also provides:

INTERNATIONAL ASSOCIATION
OF JOURNALISTS
AND EDITORS
OF THE PRESS
AND THE PUBLICATIONS
INDUSTRY
OF THE UNITED STATES
OF AMERICA

AMERICAN ASSOCIATION
OF JOURNALISTS
AND EDITORS
OF THE PRESS
AND THE PUBLICATIONS
INDUSTRY
OF THE UNITED STATES
OF AMERICA

240 I.A. 668

THE JOURNALISTS' UNION OF THE UNITED STATES

By this special agreement, the Journalists' Union of the United States, on the one hand, and the American Association of Journalists and Editors of the Press and the Publications Industry of the United States, on the other hand, have agreed to the following terms and conditions:

1. The Journalists' Union of the United States shall be recognized as the exclusive representative of the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

2. The American Association of Journalists and Editors of the Press and the Publications Industry of the United States shall recognize the Journalists' Union of the United States as the exclusive representative of the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

3. The Journalists' Union of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

4. The American Association of Journalists and Editors of the Press and the Publications Industry of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

5. The Journalists' Union of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

6. The American Association of Journalists and Editors of the Press and the Publications Industry of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

7. The Journalists' Union of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

8. The American Association of Journalists and Editors of the Press and the Publications Industry of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

9. The Journalists' Union of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

10. The American Association of Journalists and Editors of the Press and the Publications Industry of the United States shall have the right to represent the Journalists in the United States for the purpose of collective bargaining and the adjustment of grievances.

"Our staff of Consulting Accountants is ready at all times to furnish unlimited personal advice as to the proper solution of problems arising in connection with the course of study for a period of five years from the date of enrollment. They are also willing to assist in solving accounting difficulties arising in the student's daily work." These provisions are printed under a heading which reads: "A Partial List of Professional and Business Authorities Connected with the International Accountants Society," followed by about thirty names bearing titles of "C. P. A."

The defendant testified, without contradiction, that when he executed the note in question, he received about six pamphlet "lessons" from the defendant; that soon after, he became sick with pneumonia and was unable to continue for some time; that when he recovered, he found he "could not analyze the first lesson" and went over to the school with it and "tried to get some help;" that he there met a Mr. Peterson, "the credit manager or something;" that he told Peterson he could not understand the lesson and asked for assistance; that Peterson refused to give him any assistance and told him; "The lessons had to be turned in, they could not be helped out personally in school." Defendant testified that his lessons were not "turned in" because he could not understand them, and because of this refusal to help him, and that he then told Peterson to apply the \$20 he had already paid in advance "on some other student's tuition," and that Peterson replied: "It could probably be done."

Some of this testimony does not appear in the abstract. It is in the record, however, and is uncontradicted. In view of it, we are of the opinion that plaintiff's contention that the verdict is not supported by the evidence is without merit. From this undisputed testimony, the jury might well find that the consideration for the note had failed.

The judgment is affirmed.

AFFIRMED.

Barnes, P. J., and Gridley, J., concur.

For all of Communist literature is ready at all times to
 publish any and every article on the subject of religion or
 religion itself in accordance with the views of any for a
 period of five years from the date of enactment. They are also
 willing to assist in various religious publications during the
 the State's early years. These provisions are justified under a
 leading article reads: "Article 14 of the National and Religious
 Liberties (connected with the International Convention Society),"

Approved by Agent: _____ Date: _____

THE UNIVERSITY OF CHICAGO

When he received the word in relation, he walked about in
humblest "discovery" from the morning; but when it was
also with knowledge and was capable to receive for him; that
when he received, he found no "world" but only the first knowledge
and was ever in the world of life and "world" in a new world.

[illegible]

The purpose of this report is to provide a summary of the results of the study conducted by the Department of the Interior, Bureau of Land Management, in the area of the proposed project. The study was conducted in the area of the proposed project, and the results are summarized in this report.

1. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the United States in the field of human rights. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the United States in the field of human rights.

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS

6635a

PEOPLE ex rel. MAX U. MASOR,
Appellee.

v.

CITY OF CHICAGO and WILLIAM M.
DEVEN, Mayor, and MORGAN A. COLLINS,
Superintendent of Police of said City,
Appellants.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 666

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

From an order entered by the Circuit court on May 22, 1925, granting a peremptory writ of mandamus, as prayed, commanding respondents to restore to the relator certain revoked licenses, this appeal is prosecuted. To the relator's petition, filed April 29, 1925, the respondents filed a general demurrer which the court overruled. Upon their electing to stand by the demurrer the court ordered that the writ issue.

The petition alleges that the relator, a resident of Chicago for many years, is a person of good moral character and reputation; that he owns and operates in the city many drug stores in which he conducts an ice cream soda fountain business and a retail cigarette business; that some of these stores he has operated for 18 years; that on May 1, 1925, he leased from one Shepire a store located at 7640 North Paulina street for a period of 10 years; that under this lease he can there only carry on a drug business, together with the sale of ice cream and cigarettes and tobacco in all its forms, and that it is impossible for him to successfully do so without the sale of ice cream and cigarettes as an adjunct; that at various times prior to January 1, 1925, he applied for and obtained the required licenses for the sale of such articles in each of his drug stores for the calendar year of 1925;

that on December 28, 1924, he obtained the required licenses for said year for the sale of such articles in the drug store on North Paulina street, paying the proper license fees; that at this time there were in force, and are now, two ordinances of the City relating to the issuance of licenses for the sale of such articles (copies of said ordinances are attached to the petition as exhibits "A" and "B"); that since January 1, 1925, relator has been selling such articles in said store under and by virtue of said licenses; that, although he "at no time violated any of the provisions of either of said ordinances," nevertheless, the Mayor of the City, William E. Dayer, "without any cause whatsoever," entered an order on April 21, 1925, revoking said licenses, and notice of such revocation was served upon relator on April 22, 1925, as shown by copy attached (exhibit "C"); that the licenses were taken away from the premises by the Superintendent of Police of the City and relator has since been served with a writ charging him with violations of said ordinances in selling said articles without license; that such actions on the part of respondents are "arbitrary, wrongful, discriminatory and without legal excuse;" that by reason thereof relator has suffered and will continue to suffer great loss and injury in his business, etc; and that unless said licenses are restored he will be unable to continue his drug business on the premises.

Attached to the petition, as exhibits, are copies of two ordinances of the City, relating to licenses for the sale of cigarettes and to licenses for engaging in the business of keeping ice cream parlors, and also a copy of a written notice, signed by the Mayor and dated April 21, 1925, that the licenses issued to the relator, at No. 7840 N. Paulina Street, "have this day been revoked by me, on recommendation of the Gen'l Supt. of Police." According to the

copy of the ordinance, relating to a license for the sale of cigarettes, provision is made for the filing of a written application therefor by the person desiring it, and it is further provided that, "if the Mayor shall be satisfied that such person is of good character and reputation and suitable to be entrusted with the sale of cigarettes, he shall cause the City Clerk to issue a license upon payment * * of a license fee," etc.; and that "every such license shall expire on the 31st day of December following the date of its issuance;" and that

"No person shall sell or give away any cigarettes to any person under the age of twenty-one. Any person who shall violate this section shall be fined not less than \$25 for each offense. The Mayor may revoke any license issued under this chapter whenever it shall appear to his satisfaction, from the recommendation of the Superintendent of Police or otherwise, that the licensee has violated any of the provisions of this section."

The sole question for our consideration on this appeal is whether the petition states such a case for the issuance of the writ as requires the respondents to file an answer thereto, setting forth the facts upon which the Superintendent of Police acted in recommending the revocation of relator's licenses and upon which, following the recommendation, the Mayor revoked the same. After a careful review of the petition we think it states a case which is prima facie good. (Springfield & Illinois Ry. Co. v. County Clerk, 74 Ill. 27, 31.) Although it is well settled that a demurrer to a petition for mandamus, as to a declaration or complaint at law, admits only such facts as are well pleaded and that statements of conclusions may be disregarded (People v. Bussc, 248 Ill. 11, 17), we think that the allegations, viz, that the relator "at no time violated any of the provisions of either of said ordinances" and that the Mayor revoked the licenses "without any cause whatsoever," taken in connection with other allegations contained in the petition, sufficiently state such a prima facie case as requires an answer.

We are of the opinion, however, that there should be a hearing upon the merits. We regard the allegations in the petition, viz, that the actions of respondents in revoking and taking away said licenses were "arbitrary, wrongful, discriminatory and without legal excuse" as being mere conclusions, which the demurrer did not admit. It is therefore ordered that the judgment of the Circuit court awarding the writ be reversed and the cause remanded with directions to that court to allow respondents to file an answer to the petition, if they shall so desire, and have a hearing upon the merits; otherwise to re-enter the order for the writ as prayed.

REVERSED AND REMANDED WITH DIRECTIONS.

Barnes, F. J., and Fitch, J., concur.

5836a

UNION CONTRACTING CO.,
a corporation,^{as}
Complainant,

v.

WASHINGTON CONSTRUCTION CO.,
a corporation, et al.,
Defendants.

240 I.A. 667

Consolidated appeals

from Superior Court

of Cook County.

In the matter of the contempt
proceedings against PETER S.
SHAUGHNESSY,
Respondent and Appellant.

Consolidated with similar appeals
of CHARLES L. WILDE, No. 30260;
JOHN CAMPBELL, No. 30261;
JOHN J. STRETCH, No. 30262.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By these several consolidated appeals, it is sought to reverse an order or decree of the Superior court, entered January 17, 1925, wherein the four respondents were adjudged guilty of contempt of court for wilfully violating a temporary injunction, issued in said chancery cause on May 13, 1924, and respondents, Shaughnessy, Wilde and Campbell were ordered to pay fines of \$500, \$50 and \$300 respectively, and the costs of the proceedings, and to be confined in jail (not exceeding six months) until payment thereof or until discharged according to law, and respondent, Stretch, was sentenced to jail for a term of 30 days or until released according to law.

Complainant's sworn bill, filed the same day the injunction was issued, made the Washington Construction Co., the United Order of Bricklayers and Stone Masons of Chicago, Local No. 21, of Illinois, (hereinafter referred to as the

[Faint handwritten signature or initials at the top of the page]

3401 A. 682

Consolidated Assets
From Superior Court
of Cook County.

THE CHIEF JUSTICE OF THE
COURT OF COOK COUNTY,
Illinois.

V.
THE CHIEF JUSTICE OF THE
COURT OF COOK COUNTY,
Illinois.

In the matter of the
Estate of the late
JAMES J. COOK,
deceased.

Testimony with regard to
the will of the late
JAMES J. COOK,
deceased.

THE CHIEF JUSTICE OF THE COURT OF COOK COUNTY,
Illinois.

By these several consolidated accounts, it is shown
to receive an order or decree of the superior court, entered
January 11, 1880, wherein the late respondents were adjudged
guilty of contempt of court for wilfully violating a temporary
injunction, issued in said contempt case on May 12, 1881, and
respondent, JAMES J. COOK, and JAMES J. COOK were ordered to
pay fines of \$500, and \$500 respectively, and the costs of
the proceedings, and to be confined in jail (not exceeding six
months) until payment thereof or until discharged pursuant to
law, and respondent, JAMES J. COOK, was ordered to pay for a fine
of \$500 or until released according to law.

Respondent's account will, filed the same day the
injunction was issued, with the Washington Commission Co.,
the United Order of Knights and some others of Chicago,
local No. 11, of Illinois, (hereinafter referred to as the

"Bricklayers' Union") and others, including Shaughnessy and Stretch and a certain Laborers' Union, parties defendant. The bill alleged in substance that complainant was engaged in business in Chicago in constructing sewers, man-holes and catch basins; that prior to April 23, 1924, it had entered into certain sub-contracts with certain contractors to construct or repair certain sewer work in Chicago, which said contractors had agreed to do for the City of Chicago; that for the completion of said sub-contracts complainant was required to employ numerous laborers and bricklayers for several months at a large cost, had already expended considerable sums and on April 23rd had employed several workmen, members of one or the other of said unions; that complainant always had complied with the lawful rules and regulations of the unions and was ready and willing to continue so to do; that the defendant, Washington Construction Co. was engaged in Chicago in a business similar to complainant's, and for several years had had a monopoly in certain sewer work, maintained by means of controlling the supply of laborers and bricklayers in connection with the Bricklayers' Union and the Laborers' Union; that said Washington Co., the two defendant unions and certain individual defendants (naming them) had conspired together to deprive any competitor of the Washington Co. of a supply of laborers and bricklayers, by ordering members of said unions, under penalty of a fine or suspension, not to work for such competitor; and that about April 23, 1924, said last named defendants (including Shaughnessy and Stretch) conspired among themselves and with others to injure complainant by depriving it of its supply of workmen in the open market, and for the purposes of preventing it from carrying out its sub-contracts, of maintaining said monopoly of the Washington Co., of extorting money from complainant, and for other unlawful purposes. The bill then alleged certain specific acts done by certain defendants and others, in furtherance of said conspiracy, on April 23rd, May 6th, and May

7th, all of which injured complainant, and charged that unless similar acts were restrained it would suffer irreparable injury, etc. and prayed for an injunction without notice.

Following the language of the prayer, the court ordered a writ of injunction to issue, upon complainant giving a certain bond (which was given), restraining defendants, and all persons assisting them or conspiring with them, (a) from commanding, threatening or coercing any person not to enter or remain in complainant's employ; (b) from talking to, arguing with, or digging the footsteps of any person against his manifest will for the purpose of preventing him from entering or remaining in complainant's employ; (c) from ordering, causing, engaging in or maintaining any strike or boycott against complainant in furtherance of the conspiracy mentioned in the bill; (d) from loitering or being unnecessarily in the vicinity of street improvement jobs, upon which employees of complainant are working, and, by the display of numbers, threats, jeers, opprobrious epithets, etc., preventing or attempting to prevent any person from entering or remaining in complainant's employ, or interfering or attempting to interfere with complainant, its agents or employees, in the performance of its work; and (e) from attempting, encouraging, assisting, or participating in any way, in the doing of anything in furtherance of the conspiracy, or anything forbidden herein.

A joint and several answer to the bill was filed by the Bricklayers' Union and other defendants, including Shaughnessy and Stretch, in which they denied all material allegations of the bill. The Laborers' Union and other defendants also filed their answer, making denials, etc., as did the Washington Co. and other defendants.

On June 25, 1924, after notice, complainant filed a verified petition, supported by affidavits of several of its employees and others, alleging various willful violations of the

Yes, all of which interest complainants, and showed that such as
similar suits were presented it would result in a similar
also are subject to the jurisdiction of the court.

Following the language of the statute, the court retained
a right of jurisdiction to issue, after proceedings having a certain
form (which are listed), restraining defendants, and all persons
acting in concert with them, (a) from commencing,

conducting or assisting any person not to assist or remain in
conducting any person; (b) from taking any action with, or assisting
the conduct of any person against his will; (c) from taking any
action at preventing his free exercise of religious or secular rights;
(d) from exercising, assisting, or acting in or with others to
violate or attempt to violate complainant's freedom of the press.

Against complainant in the bill; (e) from assisting or taking any
action in the violation of any person's rights, upon which
complainant is entitled to relief, in the exercise of his rights,
including, but not limited to, the right of assembly, association,
travel, travel, expression, religion, etc., including or attempting

to prevent and punish from existing or remaining in complainant's
rights, or attempting to interfere with complainant's
his rights as a citizen, in the performance of his duties and (f) from
obstructing, hindering, molesting, or participating in any way in
the right of exercising in the performance of the complainant, or assisting
complainant therein.

A bill was several times in the bill was filed by the
complainant, under the name of defendant, including the following
and others, in which they denied all material allegations of the
bill. The defendants, under the name of defendant and filed their
answer, which included, among other things, that the complainant was not a
citizen.

On June 22, 1934, after motion, complainant filed a
verified petition, supported by affidavits of several of the
complainant and others, alleging various illegal violations of the

injunction writ, after service or knowledge thereof, by the Bricklayers' Union and said Stretch, and praying for a rule upon them to show cause why they should not be punished for contempt. Such rule was entered and on July 12, 1924, the Union and Stretch filed separate verified answers, in which each denied in detail the charges. On October 8, 1924, after notice, complainant filed a second verified petition, supported by affidavits of certain of its employees and others, alleging other willful violations of the injunction by the Union and, after knowledge of the injunction, by other named respondents, including Shaughnessy, Wilde and Campbell, and praying for a rule upon each to show cause, etc. Such rule being entered, verified answers were filed thereafter by said respondents, in which each denied all alleged violations. On October 29, 1924, on complainant's motion, the court ordered that the two petitions, and answers thereto, be consolidated as one cause, and that the same be referred to a master to take proofs and report his conclusions of law and fact. There was a hearing before the master, at which many witnesses testified for complainant, and respondents, Shaughnessy, Wilde and Campbell testified in their own defense and that of the Union. Another respondent, Thomas Healy, also testified. On December 12, 1924, the master, after overruling objections to his report by certain respondents, and by complainant to portions thereof, filed the report, in which, after making many findings, he recommended that the respondents, the Bricklayers' Union and Thomas Healy, be discharged, but that a decree be entered as to said respondents, Stretch, Shaughnessy, Wilde and Campbell, finding each guilty of willful violations of said injunction in the particulars as set forth in the report, and further recommended that each be punished by the court. It was ordered that the objections stand as exceptions before the court, and on January 17, 1925, the order or decree appealed from was entered, in which the court overruled all exceptions, approved the master's report and made many findings

of fact substantially in accordance therewith. To have reviewed these findings, as well as the court's conclusions, and are of the opinion that they are sustained by a clear preponderance of the evidence as to each and all of the respondents, who were officers or agents of said Bricklayers' Union, Shaughnessy being its President, Wilde its assistant financial secretary, and Stretch and Campbell two of its business agents.

Counsel for the several appellants urge numerous legal points as grounds for a reversal of the order. It is first contended that the court was without jurisdiction to refer the questions, whether each of said respondents wilfully violated said injunction and was guilty of contempt of court, to a master in chancery for his findings and conclusions, but that those questions should have been tried before a jury. We see no merit in the contention. This is clearly a case of civil contempt, as distinguished from criminal contempt. (People v. Dietrich, 141 Ill. 665, 669; Swedish-American Telephone Co. v. Fidelity & Casualty Co., 228 Id. 532, 572); and in such cases the practice and procedure as in chancery is proper and controlling. (Hake v. People, 230 Ill. 174, 192.) The court, as a chancery court, was vested with full power to punish wilful violators of its orders. (Schmidt v. Cooper, 274 Ill. 243, 250; People v. Beynon, 272 Id. 295, 301.) In the Schmidt case it is said: "The power to punish for contempt is inherent in every court of justice, and necessarily includes all acts calculated to impede, embarrass or obstruct the court in the due administration of justice, and the power is independent of statutory provisions." And the respective punishments inflicted were not unusual or improper. (Hake v. People, 230 Ill. 174, 192; Hathachild & Co. v. Stager Piano Co., 256 Ill. 194, 203.) And in such proceedings as the present it has frequently been decided that respondents are not entitled to a trial of the charges made against them by a jury. (O'Brien v. People, 216 Ill. 354, 370; People v. Kowalski, 307

Id. 378, 385; In re Debs, 158 U. S. 564, 594.)

And we think that counsels' further point, viz, that appellants' guilt of the charges of violating the injunction must be proven beyond a reasonable doubt, is equally without merit. A preponderance of the evidence is all that is required in this State in the case of a civil contempt. (People v. Bucenich, 277 Ill. 290, 294; Flannery v. People, 225 Id. 62, 69.) We do not understand that the decision of the Supreme Court of the United States in Michaelson v. United States, 266 U. S. 42, cited by counsel, is decisive of counsels' point in the case of a civil contempt. There the Court had under consideration the effect of certain provisions of the Clayton Act of October 15, 1914, requiring a jury trial upon demand in certain specified kinds of contempt (p. 62); and decided that the Act, reasonably construed, related exclusively to criminal contempts (p. 65); and further decided, following the holdings in Gompers v. Bucks Stove & Range Co., 221 U. S. 418, that in criminal contempts, as in criminal cases, proof of guilt must be beyond a reasonable doubt. Furthermore, in this connection, attention is called to the decision of the Supreme Court of this State, in Rothschild & Co. v. Stager Piano Co., 256 Ill. 196, where, after discussing the Gompers case, it is said (p. 205): "The difference between the established practice in this State and the rule laid down by the United States Supreme Court in the Gompers case is apparent."

And, under the issues as framed and the evidence, we fail to see the applicability of counsels' further point that complainant cannot be heard to complain of any rules adopted by the Union for the government of the conduct of its own members, or to invoke the aid of a court of equity to restrain the enforcements of such rules.

Counsel finally contend that, under the Act of the Legislature, entitled "An Act relating to disputes concerning terms and conditions of employment," approved June 19, 1925, and in force

IN THE COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

AND AS TO THE COURT OF THE DISTRICT OF COLUMBIA

OFFICIALS OF THE DISTRICT OF COLUMBIA

IN THE DISTRICT OF COLUMBIA

A PROSECUTION BY THE DISTRICT OF COLUMBIA

AGAINST THE DISTRICT OF COLUMBIA

IN THE DISTRICT OF COLUMBIA

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July 1, 1925, (Canill's Stat. 1925, page 221, Chap. 22, Sec. 58), the issuance of such an injunction as was issued in the present case is prohibited, and that the passage of such Act "in effect repeals and abrogates the practice and procedure in relation to such injunctions." It is a sufficient answer to the contention, we think, to say that the writ of injunction had been issued, the petitions filed, and the order appealed from entered, all before the passage of the Act. The court clearly had power and jurisdiction to issue the injunction, and, even if erroneously entered, it was not void, and the respondents were bound to obey it until set aside or modified on appeal or on writ of error. (American Cigar Co. v. Barker, 221 Ill. App. 285, 290; Franklin Union v. People, 220 Ill. 355, 357; Lyon & Healy v. Piano Workers' Union, 280 Id. 176, 181.)

For the reasons indicated the order of the Superior court of January 17, 1925, is affirmed as to respondent, Peter S. Shaughnessy, as well as to the other respondents.

AFFIRMED.

Barnes, P. J., and Pritch, J., concur.

16 - 29580

56370

IDA G. HOGG et al.,
Complainants and Appellees,

v.

JULIA CUMMINGS HOHMANN et al.,
Defendants.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

On appeal of THEODORE P. KELLER,
Appellant.

240 I.A. 667

PER CURIAM.

This appeal by Theodore P. Keller, one of the defendants to this suit, merely presents the question whether the transfer of certain stock of the Anaconda Copper Mining Company in his name, which he admits was done for the use and benefit of defendant Julia Cummings Hohmann, was properly decreed to be fraudulent and void in the decree appealed from. We passed on that question and so held on a review of the decree in the above entitled case on a writ of error sued out by said Julia Cummings Hohmann in case No. 29549, bearing the same title as above, the opinion in which has been filed this day. It is sufficient to refer to that opinion for the facts of the case and for our reasons in holding that the decree so far as it affects appellant should be affirmed.

AFFIRMED.

1037

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This report by Theodore N. Miller, one of the
 defendants in this case, contains the question whether
 the transfer of certain stock of the American Copper Mining
 Company in his name, which he stated was done for the use and
 benefit of himself and his family, was properly
 effected by the defendant and was in the nature of a gift.
 In answer to this question and to hold on a review of the facts
 in the above entitled case on a bill of review and on the
 facts concerning the same in 1904, finding the same to be
 as above, the opinion is given and held this day. It is
 testimony to refer to that opinion for the facts of the case
 and for any reasons in holding that the same be for as is
 before appealed should be affirmed.

1000 1000

27 - 30260

5836

UNION CONTRACTING CO.,
a corporation, Complainent,

v.

WASHINGTON CONSTRUCTION CO.,
a corporation, et al.,
Defendants.

APPEAL FROM

SUPERIOR COURT

OF COOK COUNTY.

In the matter of the contempt
proceedings against CHARLES L. WILDE,
Respondent and Appellant.

240 I.A. 667

PER CURIAM.

For the reasons stated in the opinion, this day
filed, in case No. 30259, the order of the Superior court
of Cook county, entered January 17, 1925, as to respondent
Charles L. Wilde, is affirmed.

AFFIRMED.

[Faint handwritten notes at the top of the page]

UNITED STATES OF AMERICA
A corporation

Company

v.

UNITED STATES OF AMERICA
A corporation
Plaintiff

UNITED STATES

UNITED STATES

UNITED STATES

240 I.A. 885

In the matter of the above
entitled cause, the following
agreement was entered into:

ARTICLE I

For the reasons stated in the petition, this day
filed, in case No. 10222, the order of the Federal court
of New Mexico, entered January 12, 1932, as is recited
therein, is affirmed.

WITNESSES

[Faint, mostly illegible text in the lower section of the document]

28 - 30261

UNION CONTRACTING CO.,
a corporation,
Complainant,

v.

WASHINGTON CONSTRUCTION CO.,
a corporation, et al.,
Defendants.

In the matter of the contempt
proceedings against JOHN CAMPBELL.
Respondent and Appellant.

PER CURIAM.

For the reasons stated in the opinion this day filed.
in case No. 30859, the order of the Superior court of Cook
County, entered January 17, 1925, as to respondent John
Campbell, is affirmed,

ATTORNEYS.

5039a

APPEAL FROM

SUPERIOR COURT

OF COOK COUNTY.

240 I.A. 667

1900 - 100

OFFICE OF THE
SHERIFF
COUNTY OF

V.

IN THE MATTER OF THE
Estate of
JAMES M. HARRIS

IN THE MATTER OF THE
Estate of
JAMES M. HARRIS

THE COURT

For the purpose of the
in the matter of the
estate of James M. Harris,
deceased, the Court has
ordered that the

RETURN

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29 - 30262

UNION CONTRACTING CO.,
a corporation,
Complainant,

v.

WASHINGTON CONSTRUCTION CO.,
a corporation, et al.,
Defendants.

Appeal from

Superior Court

of Cook County.

240 I.A. 667

In the matter of the contempt
proceedings against JOHN T. STRETCH,
Respondent and Appellant.

PER CURIAM.

For the reasons stated in the opinion this day filed,
in case No. 30259, the order of the Superior Court of Cook
county, entered January 17, 1925, as to respondent John J.
Stretch, is affirmed.

AFFIRMED.

THE UNITED STATES OF AMERICA
DO hereby certify that
the following is a true and correct
copy of the original as the same
appears in the records of the
Department of the Interior.

WILLIAM H. HARRIS, Esq.,
a corporation, of the
State of New York.

In the matter of the estate of
WILLIAM H. HARRIS, Esq., deceased,
the following is the report of the
Executor of the estate.

THE UNITED STATES OF AMERICA

For the purpose stated in the petition filed in this
case, the report of the Executor of the estate of
WILLIAM H. HARRIS, Esq., deceased, is hereby
certified to be a true and correct copy of the
original as the same appears in the records of the
Department of the Interior.

WILLIAM H. HARRIS, Esq.,

WILLIAM H. HARRIS, Esq.,

of the State of New York.

Executor of the estate of

WILLIAM H. HARRIS, Esq.,

33 - 30314

PEOPLE OF THE STATE OF ILLINOIS.
Defendant in Error.

v.

DAVE OSTRAH,
Plaintiff in Error.

ERROR TO

SUPERIOR COURT.

COOK COUNTY.

240 I.A. 668

PER CURIAM.

for brief

This case was consolidated for hearing with case No. 30313, People v. Joseph Clancy, in which we have this day filed an opinion affirming the judgment holding him in contempt of court and imposing punishment therefor. Both cases were heard at the same time and upon the same evidence, and for the reasons stated in the Clancy case the judgment in the case at bar will be affirmed.

AFFIRMED.

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the same as for all the others.

• **CONCLUSIONS**

66 - 30315

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

v.

EDWARD DECKERT,
Plaintiff in Error.

5042a
ERROR TO
SUPERIOR COURT,
COOK COUNTY.

240 I.A. 668

PER CURIAM.

This case was consolidated for hearing with case No. 30313, People v. Joseph Clancy, in which we have this day filed an opinion affirming the judgment holding him in contempt of court and imposing punishment therefor. Both cases were heard at the same time and upon the same evidence, and for the reasons stated in the Clancy case the judgment in the case at bar will be affirmed.

AFFIRMED.

See 1560 for brief

RECORDS OF THE STATE OF ALABAMA
IN 1901

7.

RECORDS OF THE STATE OF ALABAMA
IN 1901

RECORDS OF THE STATE OF ALABAMA
IN 1901

240 I.A. 668

THE RECORDS

This case was consolidated for hearing with case
No. 2011. In the case of No. 2011, the court in its
opinion stated that the judgment rendered in the
case of No. 2011 was correct and proper. In the
case of No. 2011, the court stated that the evidence
adduced was sufficient to sustain the judgment
and for the reasons stated in the opinion of the court
in the case of No. 2011, the court will be affirmed.

RECORDS

See 2011

101 - 30359

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error;

v.

JOSEPH SOLTIS,
Plaintiff in Error.

5043m
ERROR TO
MUNICIPAL COURT
OF CHICAGO.

240 I.A. 668

PER CURIAM.

This case involves the same course of procedure and rulings as those in case No. 30358, People v. Joseph Soltis, reversed in an opinion filed therein of this date. For the reasons therein stated the judgment under review must be reversed and remanded.

REVERSED AND REMANDED.

101 - 1000

REPORT OF THE STATE OF ILLINOIS
Defendant in Court

REPORT TO

ORIGINAL COURT

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LOWER COURT
District in Court

240 I.A. 668

THE COURT

This case involves the same course of procedure
and rulings as those in case No. 20101. People v. Jones
et al., reported in an earlier issue of this date.
For the reasons stated in the judgment under review
which has been reviewed and affirmed.
REVEREND AND HONORABLE.

105 - 30362

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

v.

STEVE SCHULTZ,
Plaintiff in Error.

5044a
ERROR TO

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 668

PER CURIAM.

This case involves the same course of procedure and rulings as those in case No. 30358, People v. Joseph Soltis, reversed in an opinion filed therein of this date. For the reasons therein stated the judgment under review must be reversed and remanded.

REVERSED AND REMANDED.

Page - 50000

PROSECUTOR OF THE STATE OF ILLINOIS,
Defendant in Error.

v.

STATE SOCIETY,
Plaintiff in Error.

IN SENATE
JANUARY 1908
OF ILLINOIS

2401 A. 668

THE COURT.

This case involves the same course of procedure and
evidence as those in case No. 1000, People v. State Society,
reported in an opinion filed March 17, 1907. For the
reasons therein stated the following order is hereby
reversed and remanded.

REVEREND AND HONORABLE

198 - 30364

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

v.

JOHN SOLTIS,
Plaintiff in Error.

5045d
ERROR TO

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 669

PER CURIAM.

This case involves the same course of procedure and rulings as those in case No. 30353, People v. Joseph Soltis, reversed in an opinion filed therein of this date. For the reasons therein stated the judgment under review must be reversed and remanded.

REVERSED AND REMANDED.

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1992-1993. *Journal of the American Statistical Association*, 87, 103-112.

• *2007-2008: 1st Annual Report*

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6 - 29931

HERMAN TURNER,

Defendant in Error,

v.

CARRIE SHINABLE,

Plaintiff in Error.

ERROR TO

SUPERIOR COURT,

COOK COUNTY.

240 I.A. 669

Opinion filed Wed. Feb. 3, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this writ of error the defendant, Carrie Shinable, seeks to reversed a judgment recovered against her by the plaintiff, Herman Turner, in the Superior Court of Cook County. The plaintiff filed a declaration consisting of one special count and the common counts. It will not be necessary to set forth here the particulars alleged in the special count. The ad damnum laid in the declaration was \$600. Appended to the declaration was the plaintiff's affidavit of the amount claimed to be due, in which he set forth that his demand was "for money due the plaintiff from the defendant for wages as a laborer and servant, and for board as set forth in the foregoing declaration, in addition to reasonable attorney's fees, and that there is due to the plaintiff from the defendant, after allowing to the defendant all just credits, deductions and set-offs, Three Hundred and Fifty Dollars." The defendant was duly served but did not appear and was

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2401 A. 669

Opinion filed Feb. 3, 1938.

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defaulted. The plaintiff presented his proof and his damages were assessed by the court.

It is the defendant's contention in support of her appeal that the plaintiff was limited in his recovery to the amount stated by him in his affidavit of claim, and that being \$350, the judgment which he recovered for \$450, cannot be permitted to stand. In support of this proposition the defendant has called our attention to Riddig v. Looney, 208 Ill. App. 413, where the court said the "plaintiff can prove and recover only what is stated in his affidavit of claim, but he cannot prove and recover even that unless he has an appropriate declaration on that cause of action." The question involved in that case was one affecting the sufficiency of an affidavit of merits which had been filed by the defendant, and in passing upon that question the court used the sentence quoted in commenting on a proposition that the rule limiting the defendant to the defenses set forth in the affidavit of merits would not result "in trying cases on issues formed by an affidavit of claim and an affidavit of merits." The only purpose of the affidavit is to entitle a plaintiff to judgment, as in case of default, unless the defendant shall file an affidavit of merits with his pleadings, and in case of such default the plaintiff's affidavit may be taken as prima facie evidence of the amount due, or the court may require further proof. Kern v. Strasberger, 71 Ill. 303.

In our opinion the defendant is not in a position to contend in this court that the plaintiff was limited in

... The plaintiff presented his proof and his ...
... was presented by the court.

It is the defendant's contention in support of
not appear that the plaintiff was limited in his recovery
to the amount stated by him in his affidavit of claim,
and that being true, the judgment which he recovered for
there, cannot be permitted to stand. In support of this
proposition the defendant has called out attention to
Widely v. Widely, 100 Ill. App. 413, where the court said
the plaintiff can prove and recover only what is stated
in his affidavit of claim, and he cannot prove and re-
cover more than that which he has in appropriate declaration
of that case of recovery. The relation involved in that
case was one affecting the validity of an affidavit
of claim which had been filed by the plaintiff, and in
that case the court held that the plaintiff was not
bound in recovering as a proposition that the claim limit-
ed the defendant in the recovery and that in the affidavit
of claim would not be a valid basis on which to recover
by an affidavit of claim and in support of this
the only purpose of the affidavit is to state a claim
and to recover, as in case of recovery, unless the claim-
ant fails to state an affidavit of claim with his pleading, and
in case of such failure the plaintiff's affidavit may be
taken as a valid basis of recovery of the amount due, as the
court has held in Widely v. Widely, 100 Ill. App. 413.
In our opinion the defendant is not in a position
to contend in this case that the plaintiff was limited in

the amount of his recovery, to the amount set forth by him in his affidavit of claim. The record shows that the court entered judgment as heretofore indicated "after hearing all the allegations and proofs submitted herein by the plaintiff," but the record contains no bill of exceptions. We are obliged, therefore, to assume that the proofs which the court heard were sufficient to support the judgment. If those proofs warranted the assessment of the plaintiff's damages, at an amount in excess of that set forth in the affidavit of claim, the plaintiff would have had the right to amend his affidavit, if objection had been interposed and the point of variance raised. Even if we assume, as the defendant contends, that the plaintiff was limited by his affidavit of claim, as this court did in Poss v. Briggs & Turivas, 231 Ill. App. 314, the judgment recovered by the plaintiff may not be disturbed, for the reason above set forth.

The amount of the judgment entered in the trial court was within the ad damnum laid down in the declaration, as was the case in Keator Lumber Company v. Thompson, 144 U.S. 434, where a similar contention was made and where, as in the case at bar, the evidence was not preserved by a bill of exceptions, and it was not shown that the defendant had made any objection to evidence showing an indebtedness on its part in excess of the sum claimed in the plaintiff's affidavit. In that case, the United States Supreme Court said, "No point was directly made in the court below, either before or after judgment, that the plaintiffs were limited in their

recovery, to the sum of money in their affidavit. An objection of that character, made for the first time in this court, ought not to be entertained."

For the reasons stated, the judgment of the Superior Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

respect, in the case of money in their possession, or
objection to that statement, made for the first time
on this point, which was to be made.

But the witness stated, the judgment of the
superior court is affirmed.

JUDICIAL ATTORNEY

JOHN W. BROWN, JR., JUDGE

30258
25 - 30258

PEOPLE OF THE STATE OF ILLINOIS,

Defendant in Error,

v.

NICK PAPPAS,

Plaintiff in Error.

50470
ERROR TO

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 669

Opinion filed Feb. 3, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this writ of error the defendant Pappas seeks to reverse a judgment of the Municipal Court of Chicago, by which he was found guilty of an assault with a deadly weapon, and fined \$50.00 and costs, and sentenced to the House of Correction of Cook County for the term of three months. The only point urged in support of the writ of error is that the information filed is insufficient to support the judgment, in that it was not signed or verified by the affidavit of the person presenting it.

Section 27 of the Municipal Court Act, (Gahill's Ill. Sts. Chap. 37, par. 415) provides that all criminal cases in the Municipal Court, in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, may be prosecuted by information of the attorney general or state's attorney or some other person, and when the information is presented by any person other than the attorney general or state's attorney, "it shall be verified by affidavit of such person."

STATE OF ILLINOIS
Delivered in favor of

JOHN J. COUGHLIN
OF CHICAGO

Plaintiff in Error.

240 I.A. 669

Opinion filed Feb. 3, 1936.

MR. JUSTICE LOUIS BRANDEIS delivered the

opinion of the court.

By this writ of error the defendant in error seeks to reverse a judgment of the Circuit Court of Chicago by which he was found guilty of an assault with a deadly weapon, and fined \$100.00 and costs, and sentenced to the House of Correction of Cook County for the term of three months. The only point urged in support of the writ is that the information filed in connection with the indictment, in that it was not signed or verified by the officials of the various prosecuting offices.

Section 27 of the Criminal Code Act (Smith's Ill. Stat. 1927, par. 416) provides that all criminal cases in the Circuit Court, in which the defendant is by fine or imprisonment, standing alone in the indictment, may be prosecuted by information of the attorney general or state's attorney or some other person, and when the indictment is prosecuted by any person other than the attorney general or state's attorney, it shall be verified by the officials of such person.

The information filed in the case at bar recites upon its face that "Wloyd Davis * * * In his own proper person comes now here into court and in the name and by the authority of the People of the State of Illinois, gives the Court to be informed and understand, and states the facts to be that" the defendant, Nick Pappas, had made the assault complained of, "in and upon one Wloyd Davis, with intent then and there to inflict upon the person of said Wloyd Davis a bodily injury, contrary to the statute in such case made and provided, and against the peace and dignity of the people of the State of Illinois." The information purports to be signed by "A. S. Amundsen." This information is verified by an affidavit reading as follows: "A. S. Amundsen being duly sworn, on oath, deposes and says that he resides at Chgo. Ill. that he has read the foregoing information by him subscribed and knows the contents thereof and that said information and the matters and things therein stated are true." This affidavit was signed, "A. S. Amundsen."

The writ of error is before us on the common law record and that record recites as follows: "Now comes A. S. Amundsen and in the name of the people of the State of Illinois presents to the court the information herein under oath, and moves the court that leave be granted to file said information, and the presiding Judge of this Court, having examined said information, and having examined under oath the person presenting the same, and having heard evidence thereon, and being satisfied that there is probable cause for filing the same, and said Judge, having so endorsed the same, and the Court being fully advised in the premises, it is ordered

The defendant filed in the case at bar a motion
upon the facts that "Ally Davis" is a person
between whom and the defendant there is no
the authority of the people of the State of Illinois, given
the Court to be informed and understood, and answer the
facts to be that the defendant, Ally Davis, had made
the defendant's complaint of, "in and upon the Ally Davis, with
intent that and there be injury upon the person of said
Ally Davis a bodily injury, contrary to the statute in such
case made and provided, and against the peace and dignity
of the people of the State of Illinois." The information
purports to be signed by "A. E. Johnson." This information
is verified by an affidavit reading as follows: "A.
E. Johnson being duly sworn, deposes and says
that he verified the above. He is not the person
giving information by his name and knows the contents
thereof and that said information and the nature and things
therein stated are true." This affidavit was signed,
"A. E. Johnson."

The writ of error is return on the motion law
record and that record reads as follows: "Now comes A. E.
Johnson and in the case of the people of the State of Illinois
prosecute to the State the information herein under oath, and
upon the Court that facts as narrated in this said information,
and the preceding facts of this Court, being examined
and information, and having examined belief with the person
prosecuting the same, and having heard evidence thereon, and
being satisfied that there is probable cause for filing the
same, and well advised, having so advised the same, and the
Court being fully advised in the premises, it is ordered

that leave be and hereby is granted to file said information instantler." While that information is not accurate, in our opinion, it is sufficient to support the judgment. The information is signed by Amundsen, and he makes affidavit in proper form to the effect that he has read it and knows its contents and that the information and the matters therein stated are true. That being the situation, Amundsen could have been held for perjury if it were proven that the information was false. The only question is whether or not the information was verified by the affidavit of the person presenting it, as the statute above quoted requires. The information complained of an assault upon one Davis, and on its face the information recites that Davis has come into court and given the court to be informed as therein stated. But the order entered by the court as it appears in the record recites that Amundsen was the one who presented the information to the court and made a motion for leave to file it. It seems clear, in our opinion, that the information and the order of the court, should be read and construed together and that inasmuch as the assault complained of was upon Davis, which required that the name of Davis appear in several places in the information blank, the writing of that name in the first line of that document was a clerical error. In our opinion the situation thus presented in the case at bar is not at all similar to that which was before the court in The People v. Blum, 172 Ill. App. 493, where the information on its face purported to be made by Bertha Blum, complaining of abandonment by her husband, Nathan Blum, but instead of being signed by her it purported to be signed by him, and where

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the verification of the information consisted of an affidavit reciting that Bertha Blum, being duly sworn, deposed and said that she had read the information by her subscribed and knew the contents thereof, and that the information and the matters therein alleged were true; and it also was signed by Nathan Blum. There, it will be seen, both the information and the verification were executed, not by the person presenting the information, but by the accused. Another case somewhat similar to the one just referred to was presented to this court in People v. Johnson, 229 Ill. App. 641, where the charge in the information purported to be made and presented by one Eric Hernicy, and the verification recited that it was made by Eric Hernicy, but the information and verification both were signed by one Alex Helmeox. In that case we pointed out that, as it stood, the information was neither made by the person swearing to it, nor sworn to by the person making it, and that if false, perjury could not be predicated upon it, as to either of the parties whose names appeared upon it. That is not the situation presented in the case at bar. Here the information was verified by the affidavit of the person who signed the information, and the record recites that the person presenting the information to the court was the same one who had signed it and verified it. Although the information is to the effect that the injured party was the one presenting it, we are of the opinion that should not vitiate the judgment, as it would seem to be clear that the one making out the information committed a

[illegible]

-5-

clerical error and that the recitation of the court order as it appears in the record is correct.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

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LEOPOLD COHEN IRON COMPANY,
a corp.,

Plaintiff in Error,

v.

PRICE IRON & STEEL CO.,
a corp.,

Defendant in Error.

ERROR TO

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 669

Opinion filed Feb. 3, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the
opinion of the court.

By this writ of error the plaintiff Leopold Cohen Iron Company seeks to reverse a judgment based upon the finding of the trial court, without a jury, that the plaintiff take nothing by its suit, by which judgment said suit of the plaintiff was dismissed with costs against the plaintiff. The action of the plaintiff was based upon a contract under which it agreed to sell and the defendant Price Iron & Steel Co. agreed to buy 1,000 gross tons of re-rolling steel rails at \$23.75 per ton, 500 tons to be delivered to the Calumet Steel Company and 500 tons to the Inland Steel Company, both the latter companies being located at Chicago Heights, Illinois. Under this contract all of the rails except a little over 600,000 pounds were delivered, accepted and paid for. It is the balance which is in controversy between the parties, the plaintiff claiming damages for the alleged breach of the contract by the defendant, in failing to take the balance of the rails. It appears from the evidence in the record that the plain-

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CHICAGO, ILLINOIS

Opinion filed Feb. 3, 1932.

Mr. Justice Brandeis delivered the

opinion of the court.

By this writ of error the plaintiff complains

that the defendant has wrongfully and unlawfully
deprived him of his property, to-wit: a certain
sum of money, and that the defendant has wrongfully
and unlawfully converted the same to his own use.

It is alleged that the defendant has wrongfully
and unlawfully converted the same to his own use.

It is further alleged that the defendant has wrongfully
and unlawfully converted the same to his own use.

It is also alleged that the defendant has wrongfully
and unlawfully converted the same to his own use.

It is further alleged that the defendant has wrongfully
and unlawfully converted the same to his own use.

tiff was purchasing the steel with which it was meeting the requirements of this contract, from the Chicago & Northwestern Railway Company. It appears further from the evidence in the record that the balance of the steel required for the fulfillment of this contract by the plaintiff was loaded by the Chicago & Northwestern Railway Company on orders received by it from the plaintiff on June 9, 1923. Bills of lading were made out by the Railway Company covering this steel on the day it was loaded. Under the arrangement existing between the plaintiff and the Railway Company, according to the evidence in the record, the rails that went into the cars that were loaded on June 9, remained the property of the Railway Company until paid for and the plaintiff did not have the right to have the rails removed from the shops of the Railway Company and shipped until they were paid for. The bills of lading made out on this shipment remained in the possession of the Chicago & Northwestern Railway Company until the material was paid for and the evidence shows that payment for the rails in question was made by the plaintiff to the Railway Company on June 12.

The contract between the parties to this case contained a paragraph reading as follows: "TIME OF DELIVERY. Shipments to start at once and to be distributed during the next fifty (50) days. --- You have the privilege of shipping sooner if possible."

The plaintiff proved the execution of the contract and the deliveries which had been made under it. It introduced a letter sent by the defendant to the plaintiff under

that was purchased for steel with which it was making
the manufacture of this contract, from the Chicago &
Northwestern Railway Company. It appears further from
the evidence in the record that the balance of the steel
required for the fulfillment of this contract by the
plaintiff was loaded by the Chicago & Northwestern Rail-
way Company on a car received by it from the plaintiff
on June 8, 1931. Bills of lading were issued by the
Railway Company covering this steel on the day it was
loaded. Under the agreement existing between the plain-
tiff and the Railway Company, according to the evidence
in the record, the steel was to be taken into the mill and
used loaded on June 8, 1931, and the property of the
Railway Company until such time as the plaintiff had
not have the right to have the steel removed from the
shops of the Railway Company and shipped until they were
gone for. The bills of lading made out on June 8, 1931
remained in the possession of the Chicago & Northwestern
Railway Company until the material was paid for and the
evidence shows that payment for the steel in question
was made by the plaintiff to the Railway Company on June 15.
The contract between the parties in this case was
signed a contract reading as follows: "THIS IS DELIVERY
agreement to which it was not to be distributed during
the next fifty (50) days. And the parties to
this agreement agree to execute."

The plaintiff proved the execution of the contract
and the delivery of the steel was made under it. It intro-
duced a letter sent by the defendant to the plaintiff dated

date of June 9, 1923, in which the defendant requested the plaintiff to refer to the contract in question (called an order in the latter) "which order expired on June 8. Kindly be advised that we are cancelling the remaining unshipped portion. Please adjust your records accordingly." Plaintiff also introduced a letter received from the defendant, which letter was dated June 11, and acknowledged invoices covering the shipment in question, "On order #20981, which order expired and was cancelled on June 8. This is to advise you that we will not accept these cars unless you have positive proof with bills of lading showing they were shipped prior to the 8th of this month." The plaintiff introduced further, another letter signed by the defendant dated June 11, referring to the same contract order which "expired on June 9th and we will accept no further shipments against same." Other evidence introduced by the plaintiff, as to what was done by the Chicago & Northwestern Railway Company, in the way of loading several cars of rails on June 9, under orders from the plaintiff, consigned to the Inland Steel Company, Chicago Heights, has previously been referred to. The president of the plaintiff company testified that the plaintiff paid the Northwestern Railway Company for these rails on June 12, and he got the bills of lading on the shipments on the same day. At the close of the plaintiff's evidence the court allowed a motion by the defendant for a finding in its favor, and the judgment hereinabove referred to was then entered.

In our opinion the contention of the defendant to the effect that the plaintiff failed to make out a prima

date of June 6, 1905, in which the defendant requested the
plaintiff to order to the defendant in question (which
an order in the latter) "which order applied to June 6,
1905" be advised that we are unwilling to remain
undisputed position, these subject your own responsibility.
plaintiff also introduced a letter received from the de-
fendant, which letter was dated June 11, and acknowledged
involves covering the shipment in question. "On order
number, which order expired and was cancelled on June 6,
1905" is so advised you that we will not accept these con-
ditions you have positive proof also of having shown
and they were shipped prior to the 6th of June 1905.
The plaintiff introduced further, another letter signed
by the defendant dated June 11, referring to the same
contract order which "expired on June 6th and we will
accept no further shipments against same." Other evidence
introduced by the plaintiff, as to what was done by the
Chicago & Northwestern Railway Company, in the way of
loading several cars of rails on June 6, under order
from the plaintiff, consigned to the Illinois Steel Company.
Chicago Heights, has previously been referred to. The
president of the plaintiff company testified that the
plaintiff paid the Northwestern Railway Company for these
rails on June 10, and he got the bills of lading on the
shipment on the same day. At the close of the plaintiff's
evidence the court allowed a motion by the defendant for a
judgment in its favor, and the judgment heretofore referred
to was then entered.

In our opinion the conclusion of the defendant to
the effect that the plaintiff failed to make out a claim

facie case is correct, and that being the situation, the action of the trial court in dismissing the case, was proper. The defendant contends that under the terms of the contract the plaintiff was required to deliver the steel called for by the contract within fifty days from the date of the contract. That period of fifty days expired on June 9. The plaintiff contends on the other hand, that it was complying with the terms of the contract if it shipped all the steel called for within the contract period. Even if we adopt the view of the plaintiff, the evidence submitted in its behalf failed to make out a prima facie case. It is clear from the evidence to which we have already referred, that the plaintiff did not ship the cars of steel referred to in the testimony, on June 9. The fact that the cars were loaded and the bills of lading signed by the Chicago & Northwestern Railway Company, did not accomplish the shipment. The Railway Company was not acting merely as the carrier but as the owner of the steel rails which were being purchased from it by the plaintiff. Under the evidence referred to above, the plaintiff did not acquire title to these cars until June 12, and was not in a position to ship them to the defendant on this contract until that time, and the evidence shows that they did not leave the possession of the Railway Company until that day or after.

Apparently, in an effort to make out a prima facie case, the president of the plaintiff company testified that on June 9, 1923, the plaintiff had 500 tons or more of re-

which was in contract, and was being the attention, the
nature of the trial was in determining the case, and
proper. The defendant contends that under the terms of
the contract the plaintiff was entitled to deliver the
steel called for by the contract within fifteen days from
the date of the contract. The date of the contract
expired on June 8. The plaintiff contends on the other
hand, that it was complying with the terms of the con-
tract it is entitled to the steel called for within the
contract period. Even if we adopt the view of the
plaintiff, the evidence submitted in the trial failed
to show that a right to the steel was. It is clear from the
evidence to which we have already referred, that the
plaintiff did not ship the steel referred to in
the testimony, on June 8. The fact that the steel was
loaded on the ship or being signed by the Chicago &
Northwestern Railway Company, did not constitute the ship-
ment. The railway company was not acting solely as the
carrier but as the owner of the steel which was
being transported from it by the plaintiff. Under the
evidence referred to above, the plaintiff did not establish
that it shipped the steel on June 8, and was not in a posi-
tion to ship the steel on the contract on this date and still
that time, and the evidence shows that they did not make
the shipment to the railway company until that day or
after.

Accordingly, in an effort to make out a right to the
steel, the president of the plaintiff company testified that
on June 8, 1907, the plaintiff had 500 tons of steel at re-

rolling rails in their yards. In answering objections made by counsel for the defendant to this testimony, counsel for the plaintiff remarked that the plaintiff could have performed if the defendant had not stopped it. In our opinion, the testimony in the record does not bear out that statement. Under the terms of the contract it was incumbent upon the plaintiff, at least to ship if not to deliver, all the steel called for by the contract, consigned as specified in the contract, on or before June 9, 1923. The evidence fails to disclose anything, either done or said, by way of letter or otherwise, by the defendant which can reasonably be construed as having caused a failure on the part of the plaintiff to comply with the terms of the contract in this regard. The communication from the defendant to the plaintiff, purporting to cancel the balance of the steel called for by this contract, which had not been shipped, was dated June 9. The evidence does not show when the plaintiff received it. In the ordinary course of business it would have been on June 11, for the 10th was Sunday. The first communication referred to by the president of the plaintiff company, in the course of his testimony, is a letter which he says he received on June 11. That presumably, was the defendant's letter of June 9. The only other communications from the defendant to the plaintiff, in the record, are dated June 11. It thus appears that the first intimation coming to the plaintiff that the defendant was refusing to take further deliveries under the contract, on the ground that the time for performance had expired, was two days after the time

for performance, under the contract, had expired. This is on the assumption that the plaintiff's interpretation of the contract is correct, to the effect that it did not call for complete delivery on or before June 9, but shipment on or before that date. No matter how much scrap steel of the kind called for by this contract may have been lying in the yards of the plaintiff, it had failed to comply with the terms of the contract if it had neglected to ship the steel within the contract period, and, as already stated, no showing was made to the effect that anything said or done either misled the plaintiff or caused it to postpone making the last shipments in fulfillment of the contract, until after the expiration of the period clearly specified by the terms of the contract.

Several matters are referred to by the parties in the briefs filed in this court, to which we do not refer in this opinion, because, in our opinion, the matters to which we have referred determine the issue presented, and because of these reasons, the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

the witnesses, under the contract, was required, and
 it is the contention that the plaintiff's testimony
 of the contract is correct, in the sense that it was
 not all day complete delivery on or before June 7, but
 shipment on or before that date. In order that such
 party need of the time taken for its shipment may
 have been lying in the hands of the plaintiff, it has
 failed to show that the terms of the contract it is
 and obligated to ship the steel within the contract
 period, and, as already stated, no shipment was made
 in the period specified and it is not shown that
 the plaintiff or consignor to defendant failed to
 take steps in fulfillment of the contract, until
 after the expiration of the period thereby specified
 by the terms of the contract.

General notice was referred to by the parties
 in the briefs filed in this court, to show as to what
 order in this opinion, because, in our opinion, the
 matters at issue are more correctly determined by the
 provisions and because of their nature, the subject of
 the contract must be stated.

THE COURT'S DECISION.

THE COURT'S DECISION.

95 - 30352

FRANK GOLDBERG,

Appellee.

v.

JOHN C. PHILPOTT,

Appellant.

APPEAL FROM

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 669

Opinion filed Feb. 3, 1936.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendant seeks to reverse a judgment for \$69.00, recovered against him by the plaintiff in the Municipal Court of Chicago. The plaintiff was the owner of an automobile which was being driven by one Geneva Brown when it was damaged in a collision with a car owned and driven by the defendant at the intersection of 68th and State Streets in the City of Chicago. The plaintiff brought this action against the defendant to recover the cost of the repairs necessitated by this collision.

The plaintiff called the defendant as a witness under section 33 of the Municipal Court Act, and he testified that State Street is a north and south street, with a double track street car line upon it and 68th street is an east and west street without street car tracks. Vincennes avenue is a street running northeast and southwest, terminating at the west side of State Street, a little north of 68th street and running in a southwesterly direction from that

FRANK H. BROWN,

Plaintiff,

v.

JOHN C. BROWN,

Defendant.

STATE OF OHIO,

SHIRLEY COURT,

OF OHIO.

2401 A. 669

Opinion filed Feb. 3, 1936.

MR. JUSTICE TOWNSEND delivered the

opinion of the court.

By this appeal the defendant seeks to reverse a judgment for \$25.00, rendered against him by the plaintiff in the Municipal Court of Chicago. The plaintiff was the owner of an automobile which was being driven by one person when it was damaged in a collision with a car owned and driven by the defendant at the intersection of 10th and State Streets in the City of Chicago. The plaintiff brought this action against the defendant to recover the cost of the repairs necessitated by this collision.

The plaintiff called the defendant as a witness under section 17 of the Municipal Court Act, and he testified that there is a north and south street, with a double track street on the west side and south street on the east and west streets which cross at right angles. There is a street running northeast and southwest, parallel to the west side of State Street, a little north of 10th Street and running in a southeasterly direction from that

point, crossing 68th street about 50 feet west of the west line of State street. The triangle formed by these three streets on the north side of 68th street, contained no building or other structure to obstruct the view. The defendant testified when called as a witness by the plaintiff, that he was driving a Buick car east along the south side of 68th street; that he stopped at the west side of Vincennes avenue and then started up and proceeded east and again stopped at the west side of State street, where a southbound street car crossed his path; that he looked both ways and saw nothing else approaching, and he started up in first speed, and was just going across the northbound car track when he collided with the rear end of the plaintiff's car, which had come from the north, on the east side of State street; that there were no lights showing on the plaintiff's car and he did not see it approaching; that the accident happened about half past six in the evening on October 20, 1924; that "with the street car passing I couldn't see the car coming from the north. Anyway, I never looked for a car to come on the wrong side of the street;" that when he collided with the plaintiff's car he had passed the center of the intersection.

Geneva Brown, called as a witness by the plaintiff testified that she was driving the plaintiff's car, also a Buick, at the time of the collision; and that it was quite dark; that the lights on her car were lighted but that she thought the collision put them out; that she did not see the defendant's car approaching until she was about in the middle of 68th street and at that time the defendant was coming

point, observing that about 80 feet west of the
west line of water street. The entrance formed by
these three streets on the north side of 13th street, and
formed an opening or square between the
streets. The defendant testified that when called on a witness
by the plaintiff, that he was driving a motor car west
along the north side of 13th street; that he stopped at the
west side of the square and then started up the west
street and then stopped at the west side of the
square, where a northbound street car crossed the path;
that he looked both ways and saw nothing else approaching,
and he started up in that square, and the last going square
the northbound car struck him he collided with the rear
end of the plaintiff's car, which had come from the north.
On the east side of water street; that there were no lights
showing on the plaintiff's car and he did not see it
approaching; that the collision happened about half past
six in the evening on October 20, 1925; that with the street
car passing a southbound car the car coming from the north,
anyway, I never looked for a car to come on the north side
of the street; that when he collided with the plaintiff's
car he had passed the center of the intersection.

Benjamin Brown, called as a witness by the plaintiff
testified that he was driving the plaintiff's car, also a
motor car, at the time of the collision and that it was going
west; that the lights on his car were lighted but that he
thought the collision was from west; that he did not see the
defendant's car approaching until he was right in the middle
of 13th street and at that time the defendant was coming

east on that street west of the west curb line of State street and was 18 or 20 feet away from her; and she swung to the east in an effort to avoid him. She said the defendant was going about 18 miles an hour and that she could not remember that there were any conveyances ahead of her. She also testified that as a result of the collision, the body of the plaintiff's car was dented, the fender was broken and the running board also. On cross-examination she testified that at the time of the collision she was going about 15 or 18 miles an hour, and that after the cars came together the defendant's car pushed the plaintiff's car about 5 feet. She stated that the pavement was of brick and that it was dry, and that at the speed she was going she could have stopped her car within its length, and that after the collision her car moved about 5 feet before it came to a stop. She also testified that she "thought it was kind of funny, after I was in the middle of the crossing and going across, that he wouldn't slow down," and she therefore blew her horn.

The defendant took the stand in his own behalf and testified to the facts of the occurrence as he had already referred to them in his examination when called as a witness by the plaintiff. He also said he was not going over two or three miles an hour when the collision took place and that the plaintiff's car was being driven about 20 miles an hour. He stated that after the collision, his car moved 8 or 10 feet and the plaintiff's car about 15 feet before coming to a stop. He said he had his lights on but that the plaintiff's car did

went on that street west of the West Main line at about
 10:00 am and was in or 10 feet away from the car
 to the way in an effort to avoid him. He said the de-
 tective was about 10 feet in front of him and that he
 could not remember him; there were two other persons
 at the time. The witness testified that he was not collid-
 ing, the body of the plaintiff's car was damaged, the
 car was pushed out of the street about 10 feet. In ques-
 tioning the witness testified that at the time of the colli-
 sion the car was going about 10 or 15 miles an hour, and that
 after the car was stopped the detective was asked
 the plaintiff's car about 10 feet. He stated that the de-
 tective was of white race and that he was about 10 feet
 the way being the witness testified that the witness was
 about 10 feet after the collision for the witness about 10 feet
 before it came to a stop. The witness testified that he
 thought it was kind of funny, after I was in the middle of
 the collision and having to stop, that he wouldn't know what
 and was therefore not hit.

The defendant took the stand in his own behalf and
 testified to the facts of the accident as he had already
 testified to in his deposition and stated in a witness
 by the plaintiff. He also said he was not going over 10 or
 15 miles an hour when the collision took place and that the
 plaintiff's car was being driven about 10 miles an hour. He
 stated that after the collision, his car moved 8 or 10 feet
 and the plaintiff's car about 10 feet before coming to a stop.
 He said he had his lights on but the plaintiff's car did

not. On cross-examination he stated again that he was going 3 or 3 miles an hour at the time of the accident. He was then asked this question, "After you hit her, you knocked her about 15 feet?" His answer was "10 or 15 feet."

A Mr. and Mrs. Cook were riding with the defendant at the time of the occurrence in question, sitting in the rear seat of his car. Mrs. Cook testified that a car was going south on State street and the defendant stopped his car at that point, and then started up in first speed. She was asked how many miles per hour he was going, and she answered, "Just three miles an hour." She also stated that after the accident the defendant's car went "five feet or so" before coming to a stop, and the other car went about 20 feet. She stated that the plaintiff's car had no lights on it but that the defendant's car did and that the plaintiff's car was going about 18 or 20 miles an hour, going south on the east side of State street. On cross-examination she stated that she didn't see the plaintiff's car at all before the collision. Mr. Cook testified substantially to the same effect.

In support of his appeal the defendant contends that inasmuch as he was approaching the intersection in question from the right of the driver of the plaintiff's car, he had the right of way, and that the evidence shows that Miss Brown, in failing to yield the right of way and proceeding over the intersection, although she did not have the right of way, was guilty of contributory negligence; and that the finding of the trial court, to the contrary, is against the manifest weight of the evidence.

not. On cross-examination he stated again that he was going
to a mine on the day of the accident. He was there
about four o'clock, after the day, and worked for
about 12 hours. He worked for 12 or 13 hours.

A Mr. and Mrs. Cook were riding with the defendant
at the time of the accident in question, sitting in
the rear of the car. Mrs. Cook testified that a car was
going north on State Avenue and the defendant stopped the car
at that point, and then started up in front of her. She
was asked how many times she saw him on that day, and she
answered, "I saw him twice on that day. Once when he was
driving the vehicle and defendant's car came fifteen feet
behind her and he stopped, and the other car went about
10 feet. The second time the defendant's car was 10 feet
behind her and the defendant's car was 10 feet behind her
and he was going about 10 or 15 miles an hour, being
about on the east side of State Avenue. He drove
from the street where the defendant's car was at all
times the collision. He took testimony substantially to
the same effect.

In support of his story the defendant offered that
defendant as he was approaching the intersection in question
from the west at the corner of the defendant's car, he had
the right of way and that the witness knew that this was
in failing to yield the right of way and proceeded over the
intersection, although she did not have the right of way.
was guilty of contributory negligence; and that the finding
of the trial court, to the contrary, is against the weight
of the evidence.

As we stated in the recent decision of Quitz v. Ghinbloom, and Sullivan case No. 30009, Illinois Appellate Court, First District, opinion filed, December 23, 1925, "We have had occasion to consider a number of cases concerning automobile collisions at street intersections, where the provision of the statute that a car approaching such an intersection from the right had the right of way over a car approaching it from the left, was involved. In applying that statute to the various situations involved in the different cases, we have endeavored to point out that this so-called law of the road must necessarily be applied to each case in the light of the circumstances involved." When we come to examine the circumstances presented in the case at bar, we find that under the facts as testified to by Miss Brown, this so-called law of the road is not applicable. She testified that she was half way across 68th street when the defendant was still west of the west line of State street; that the defendant was driving his car about 18 miles an hour and she was driving about 15 miles an hour. If that was the situation she was more than half way across the intersection when the defendant reached it. On the defendant's theory that he came to a stop at the west side of State street, it could not reasonably be said that in starting up to proceed across the street, he had the right of way over any and all motor traffic that might be approaching from the north on State street. Having stopped at the intersection it was his duty to see that the way was clear before he proceeded. The evidence in many respects is in sharp conflict; especially on the question of whether the

lights on the plaintiff's car were lighted, and whether plaintiff's car was being driven on the wrong side of the street. If, as Miss Brown testified, the defendant's car was west of the west curb of State street, and only twenty feet from her, she could not have been driving on the east side of the street until she swung over to avoid him. As to these points on which the witnesses differed, the trial court was in a much better position to pass on the credibility of the respective witnesses than we are. In our opinion, this court is not in a position to say that the finding of the trial court was against the manifest weight of the evidence.

The defendant contends further that the plaintiff failed to make proper proof as to his damages. On that question the plaintiff testified that he took his car to a garage for the purpose of having it repaired after this collision; that it was in good condition before the collision; that most of the repairs were made in his presence; that some time previous to this occurrence he had been employed in an automobile repair shop and that he had some knowledge of labor and services required in repairing automobiles; that as a result of this collision, a new fender was put on his car and a new running - board, and a dent in the body was pushed out, and several brace or staves installed to strengthen it; and also the rear wheels were properly lined up, all of which things were done under his direction. The plaintiff produced an itemized receipted bill of the garage, specifying these various matters, including the labor, the items of which aggregated \$69.00, and he

testified that he was at the garage the greater part of three days while these repairs were being installed, and that the work consumed about 17 or 18 hours. In our opinion, that proof was sufficient. Gloyes v. Platje, 231 Ill. App. 183.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

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For the purpose stated the following is the

• *Journal of the History of Ideas*, 1977, 38, 1, 1-14

417336

2. *Results* 2.1. *Subjective ratings*

121 - 30379

MORRIS WULBERT,

Defendant in Error,

v.

HYMAN RUBIN,

Plaintiff in Error.

240 I.A. 670

ERROR TO

COUNTY COURT,

COOK COUNTY.

Opinion filed Feb. 3, 1926.

MR. PRESIDING JUSTICE THOMSON delivered the opinion of the court.

The plaintiff, Wulbert, brought this action against the defendant, Rubin, seeking to recover a commission claimed to be due him on the sale of certain real estate owned by the defendant. The issues were submitted to a jury, resulting in a verdict for the plaintiff, which assessed his damages at the amount sued for, \$795.00. Judgment was entered against the defendant for that amount, and he sued out this writ of error, contending that the judgment should be reversed because the verdict is against the manifest weight of the evidence; that the trial court erred in admitting certain testimony of the plaintiff, to which objection was made; and also in the giving of and refusing certain instructions.

In passing upon the first point urged by the defendant in support of his writ of error, it has become necessary to examine the evidence. The abstract filed by the defendant is attacked by counsel for the plaintiff in the brief filed by them, it being alleged that in com-

3401 A. 670

EXHIBIT TO
DOCKET ENTRY
FILED OCTOBER 1, 1938

Defendant in Error

v.

Plaintiff in Error

Opinion filed Feb. 3, 1938.

MR. JUSTICE CLARK delivered the

opinion of the court.

The plaintiff, Liberty, through this action against the defendant, Liberty, seeking to recover a certain sum of money claimed to be due him on the basis of certain evidence given by the defendant. The issues were submitted to a jury, resulting in a verdict for the plaintiff, with interest on the sum of \$1,000.00.

Defendant was asked to return the amount for that amount, and he did not do so with any error, contending that the judgment should be reversed because the verdict is against the plaintiff and the evidence; that the jury found error in admitting certain testimony of the plaintiff, to which objection was made; and also in the giving of instructions certain instructions.

In reaching upon the first point urged by the defendant in support of his writ of error, it is necessary to examine the evidence. The evidence filed by the defendant is as follows: (1) The plaintiff is not a party to this case, it being alleged that in 1938

paring the abstract with the record counsel have found that "there has been consistent elimination throughout the entire abstract." Counsel then proceed in their brief to give four or five illustrations of this condition of the abstract, about which they complain. They then say in their brief that they "realize that the proper method of meeting the situation is to prepare an additional abstract pointing out the defects. Were this case of sufficient consequence to justify this work and expenditure we would have been only too glad to prepare a complete new abstract. The amount involved, however, does not increase with continued litigation, but remains the same, while the expense incidental to continued litigation does increase. Under the circumstances we trust that the court in looking to any question of fact, will give such consideration to the abstract as prepared by plaintiff in error as the situation demands." What this amounts to is saying to this court that counsel do not consider their case of sufficient consequence to justify the work and expenditure necessary to the preparation of a proper abstract, although the one supplied by the defendant in error is alleged to have consistently left out important evidence throughout the record, and, therefore, we are asked to give it such consideration "as the situation deserves." We would remind counsel if the situation is as they contend, it deserves better treatment than they have given it. The work of a court of review is quite sufficient without having the duties of counsel added to it. The situation referred to has made it necessary for us to carefully examine all the testimony as it appears in the record.

entirely examine all the testimony as it appears in the
the situation before, as the same is necessary for us to
entirely examine all the testimony as it appears in the
they have given it. The work of a court of review is to
nature is as they contain, it contains certain statements that
the situation of affairs, he would be bound to do so. It is
inadequate, we are going to give it our consideration as
if left out without which would be the result, and
plied by the defendant in error is alleged to have constituted
the preparation of a report of it, although the one who
consequence to justify the work and expenditure necessary to
court that counsel do not consider their case in connection
the court, that this report is to be made to this
the court as prepared by plaintiff in error as the other
to my opinion of fact, will give more consideration to
Under the circumstances we think that the court is looking
the same method as mentioned in the first case in error,
course is to consider plaintiff, but within the same, while
interest. The one of interest, however, does not in-

• **Training** – the process of teaching a person or animal to perform a specific task or behavior.

The plaintiff Mulbert, a duly licensed real estate broker, testified that he first met the defendant while he was at work on the property which is the subject of this controversy, in December, 1922; that the defendant told him he was the owner of the building, and he told the defendant he was a real estate broker and gave him his name and handed him a card; that the defendant stated he wanted to sell the building and his price was \$26,500, and in this connection he testified that the defendant said that "he will pay me my usual commission, and he had a first mortgage of \$15,000 and he wants about \$8,000 cash and the balance he will make arrangements with the buyer, as a second mortgage;" that he told the defendant he had people in view and would submit the building and try to make a deal. Plaintiff further testified that he later submitted the building to Mr. and Mrs. Harry Rubin, (not related in any way to the defendant) whom he knew to be in the market for a building of this nature; that he talked to them no less than a dozen times and took Mrs. Rubin over to look at the building, which was then in process of construction. Mr. and Mrs. Rubin had a delicatessen store, and the plaintiff testified that owing to the fact that it was necessary for one of them to remain in the store, Mr. Harry Rubin did not accompany them when he took Mrs. Rubin to look at the building; that the witness took Mrs. Rubin into the building and they had a talk with the defendant about the price. - "Mrs. Rubin tried to depreciate the rate of the building," - and she finally told the defendant she would talk it over with her husband; that they were there about an hour. The plaintiff's testimony was further of the effect that Harry

The Plaintiff's Exhibit, a copy of the same

being, testified that he first saw the defendant while he was at work on the property which is the subject of this controversy, in November, 1911; that the defendant told him he was the owner of the building, and he said the defendant was a real estate broker and gave him the name and address of a man; that the defendant stated he wanted to sell the building and his wife was Mrs. Jones, and in this connection he testified that the defendant said that the wife was on my usual consulting, and he had a first offer of \$11,000 and he would about \$12,000 and the balance he will make arrangements with the buyer, as a second mortgage; that he told the defendant he had money in view and would accept the building and try to make a deal. Plaintiff further testified that he later understood the building to Mr. and Mrs. Mary Jones, (not related to any way to the defendant) whom he knew to be in the market for a building of this nature; that he failed to show no facts when a given time and that Mrs. Jones never took it the building, which was then in process of construction. Mr. and Mrs. Jones had a religious meeting, and the plaintiff testified that going to the fact that it was necessary for one of them to remain in the state, Mr. Jones and his wife accompanied them when he took Mrs. Jones to look at the building; that the witness saw Mrs. Jones enter the building and they had a talk with the defendant about the price. - Mrs. Jones tried to reproduce the rate of the building, - and she finally said that defendant was told that it was also her husband; that they were about to build. The Plaintiff's testimony was further of the effect that Mary

Rubin never went over to the building with the plaintiff, but that he talked the matter over with both him and his wife many times after she had visited the property with the plaintiff.

The plaintiff testified further that he found out the following spring that the defendant had sold this building to the Rubins and he then saw the defendant and wanted to "find out the reason why they left me out," and that the reason given by the defendant was that "I had not introduced Harry Rubin to him, but Mrs. Rubin, so Harry Rubin approached him when he made the deal and he made the deal with Harry Rubin without knowing it was the husband of the woman I introduced to him * * * and when he finally met Mrs. Rubin and recognized it was the same party, he claimed that he made an effort or wanted to make an effort to get in touch with me but didn't know my address. * * * He asked David Horwitz whether he knew a broker by the name of Morris Mulbert because he thinks Morris Mulbert has to be taken care of! The plaintiff also testified that in that conversation the defendant told him that he had protected himself by putting a clause in the contract. "that in case I will sue him for the commission, the burden of compensating me will fall on the buyer," and that he also said, "if you will sue me I will be against you but go ahead and sue the buyer;" that the plaintiff replied that he did not believe he could sue the buyer, because his understanding was with the defendant, that the defendant would pay the plaintiff for this efforts, in case he sold the building. A certified copy of the deed from the

defendant and his wife to "Harry Rubin" was introduced in evidence. It was admitted the property was sold by the defendant to Harry Rubin for a consideration of \$26,200. The plaintiff testified that the usual and customary fee charged by real estate brokers in the city of Chicago, in transactions in the nature of the one involved in the case at bar, was "3 per cent for everything over \$10,000" and that "according to that it would be 3 per cent of the amount of the sale price of this property."

On cross-examination the plaintiff testified that when he approached Harry Rubin again (apparently meaning after he had shown the property to Mrs. Rubin) trying to close the deal with him, he found him reluctant to discuss any matter about the property and when he later approached the defendant about the deal "I found him much cooler on the proposition and I couldn't account for the reason."

On re-direct examination the plaintiff testified that when he visited the defendant's property with Mrs. Rubin, he explained to the defendant that Mr. Harry Rubin was not able to come to look at the property, because he and his wife could not both leave their store at the same time and "I told him exactly what Harry Rubin told me, that if Mrs. Rubin is satisfied with the building, it is satisfactory to him."

One Horwitz testified that he was a real estate broker and knew both the parties to this case; that he was the one who negotiated the first mortgage on the defendant's property; that after the sale of this property he

had a conversation with the defendant about the sale, in which the defendant said that at the time the deal was closed "he thought the party, the lady buyer, that is the wife of the purchaser, was brought by Mr. Wulbert to the building. He wasn't positively certain about it, but he thought she was brought to the building by Mr. Wulbert and that he didn't know Wulbert very well, that he didn't know where to locate him and he just passed the matter up." This witness testified that he discussed the same matter with the defendant later, on one or two occasions, and, in one of those conversations the defendant said he "thought he couldn't do anything in the matter because he wasn't certain at the time of the closing of the deal; that the buyers claimed that they were not submitted at the building by anybody, that they came there themselves or probably with a party by the name of Kaplan. I recollect that a Mr. Kaplan was associated in this deal and that they were not submitted at the building by Wulbert at all. - That was the substance of the second conversation." On cross-examination this witness, said that the defendant told him "there was something funny about this deal," that he thought the woman referred to was brought there by a man named Wulbert⁸. The witness stated that he later told the plaintiff of this conversation.

Mrs. Harry Rubin was called as a witness by the plaintiff. She testified that before the defendant's property was purchased by her husband, she went to look at the building with the plaintiff, but that before she went to look at it, the plaintiff had not talked the matter over with

had a conversation with the defendant about the wife, in which the defendant said that at the time the deal was closed the defendant was in the city, the lady being there in the wife of the defendant, and present at Mr. Wilbur's in the building. He wasn't positively certain about it, but he thought the defendant was in the building of Mr. Wilbur and that he didn't know Wilbur very well, that he didn't know where to locate him and so just passed the matter up. This witness testified that he discussed the matter with the defendant later, on one or two occasions, and, in one of those conversations the defendant said he thought he couldn't be located in the matter because he wasn't certain of the time of the closing of the deal; that the witness claimed that they were not admitted at the building in any way, that they were themselves at the building with a party by the name of Kaplan. I recall that a Mr. Kaplan was associated in this deal and that they were not admitted at the building by Wilbur at all, - that was the substance of the second conversation. On cross-examination this witness testified that the defendant told him "there was something funny about this deal," that he thought the witness referred to was brought there by a man named Wilbur. The witness stated that he later told the plaintiff of this conversation.

Mrs. Mary Kaplan was called as a witness by the plaintiff. She testified that before the defendant's conversation was conducted by her husband, she went to look at the building with the defendant, but that before she went to look at it, the plaintiff had not asked her matter over with

her husband, but only with her, at a time when her husband was not present, and that so far as she knew the plaintiff never discussed the deal with her husband. She denied seeing the defendant at the property at the time she visited it with the plaintiff, and said that when they went to the property they were not able to get into the building and she talked with no one there. She was asked if the plaintiff told her the price of the building before he took her over there and she said he did not, and that she did not ask what the price was nor did she tell him what kind of a building she wanted nor how much money she wanted to spend, and that the plaintiff did not ask her any questions on that subject. On cross-examination, she testified that the plaintiff did not introduce her to the defendant. She was then asked, "Did Mr. Hulbert say anything about the husband, or Harry Rubin to Hymant" (defendant) Her answer was, "No sir, it was too cold. There was no windows in or anything to stand on." She testified that the plaintiff and the defendant did not, in her presence, at that time, discuss anything about the price and that the plaintiff did not tell her "that this man working there in working clothes was the owner." She testified that the first time she met the owner was several weeks after she and her husband had moved into the property. She testified that her husband bought this property and she had nothing to do with it, and she never talked with her husband about the transaction at all and he never discussed it in her presence. On re-direct examination she testified she knew she was going to look at this building, and she was

her husband, but only with her, at a time when her husband
was not present, and that he had seen the plaintiff
enter the house the day after the death. The fact that
the defendant at the property of the time she visited it
with the plaintiff, and that she was then with the pro-
perty only once and then to see into the building and was
told with no one else. The defendant is the plaintiff's
her the time of the building, but he took her away from her
and was not with her, and that she did not see the wife
and not the wife, but that she was in a building she wanted
not to see much money and wanted to see, and that the plain-
tiff did not see her any more in that building. On cross-
examination, she testified that the plaintiff did not leave
her to the defendant. She was then asked, "Did you
know any one else who was in the building, or any one else
who was in the building?" She answered, "No, sir, I was not
told. There was no one else in or coming to see her."
She testified that the plaintiff and the defendant did not
in her presence, at that time, discuss anything about the
price and that the plaintiff did not tell her that she
was working there in working clothes with the owner. She
testified that the first time she and the owner saw each other
was after she and her husband had moved into the property.
She testified that her husband bought the property and she
had nothing to do with it, and she never talked with her hus-
band about the transaction as if he had never discussed it in
her presence. On re-direct examination she testified that
from the time she came to live in the building, and she was

then asked if the plaintiff came to her store and talked about the building, and she answered, "Not that I know anything about." She was asked if she ever saw the plaintiff in her store and she answered, "After while, in the spring." The visit which she admitted making with the plaintiff was in December. She was asked on cross-examination whether she told her husband she had seen the building and she answered, "No sir, because I had heard nothing of it, I had nothing to say." She admitted she had no intention of buying the building herself, and her only purpose in going to see it was to come back and report to her husband; but she insisted she did not tell her husband she was going to see it, nor after she returned did she tell him she had seen it.

The defendant testified that he first met the plaintiff in December, in the basement of the building he was then constructing, and which he later sold to Harry Rubin; that the plaintiff asked the defendant if he owned the building and he said he did; and he then asked him if he wanted to sell it and the defendant replied that he did, and the plaintiff then asked how much he wanted for it, and he replied that he did not know as yet, for the building was not ready to sell; and he told the plaintiff he had better wait until later. He further testified that the plaintiff said he thought he could get a good price for it, but he did not mention any price but said he might sell when the building was nearer completion. The defendant denied that the plaintiff gave him a card or stated that he

then asked if the plaintiff came to her store and talked
about the building, and she answered, "Yes, that I have
explained already." She was asked if she ever saw the plain-
tiff in her store and she answered, "After while, in the
winter." The state which was admitted during the trial
plaintiff was in December. She was asked if cross-examina-
tion whether she told her husband she had seen the building
and she answered, "No sir, because I had heard nothing of
it, I had nothing to say." The witness was asked an inter-
view of buying the building herself, and her only response
in going to see it was to make sure and report to her
husband; but she stated she did not tell her husband
she was going to see it, nor after she returned did she
tell him she had seen it.

The defendant testified that he first met the
plaintiff in December, in the basement of the building
he was then constructing, and asked her later when to
Harry asking her the plaintiff asked the defendant
if he could see the building and he said he would and he then
asked her if he wanted to sell it and the defendant replied
that he did, and the plaintiff then asked how much he wanted
for it, and he replied that he did not know as yet, but
the building was not ready to sell; and in the fall of 1910-
11 he had better wait until later. He further testified
that the plaintiff said he thought he would get a good price
for it, but he did not mention any price and said he would
sell when the building was nearly completed. The defendant
testified that the plaintiff gave him a checkbook stating that he

was a real estate man, or that he, the defendant, told the plaintiff he would give him a commission for the sale of the building.

The defendant said he first met Harry Rubin in January, when one Kaplan introduced him to Rubin. At another point he testified that he had previously met Harry Rubin in December, but that the plaintiff never introduced Rubin to him and he never saw the plaintiff and Rubin at the same time, and that the plaintiff never mentioned Harry Rubin to him prior to April 1933. He testified that the first time he ever saw Mrs. Rubin was when he visited the building several weeks after the Rubins moved into it. He admitted knowing Horwitz but denied meeting him and Harry Rubin together. (Horwitz had not testified to any such occurrence. His testimony was that while he and the defendant were together they had met the plaintiff, - not Harry Rubin.) The defendant admitted having a conversation with the plaintiff but apparently when he claimed Horwitz was not present, and he said he told the plaintiff in that conversation that he had sold his property to a man named Kaplan and that Kaplan had sold it to Harry Rubin, and he told the plaintiff that he (the plaintiff) never introduced Harry Rubin. The defendant testified that he did not talk to Horwitz about the plaintiff's claim before he had this conversation with the plaintiff, and that Horwitz was not present at the time of that conversation.

The defendant testified that at the time he sold the property to Harry Rubin, he had no information that the

was a well known man, on that day, the defendant, said
the plaintiff he would give him a commission for the sale
of the building.

The defendant said he first met Harry Rubin
in January, when the Rubin introduced him to Rubin. At
another point he testified that he had previously met Harry
Rubin in December, but that the plaintiff never introduced
Rubin to him and he never saw the plaintiff and Rubin at
the same time, and that the plaintiff never introduced Rubin
Rubin to him prior to April 1935. He testified that the
first time he ever saw the Rubin was when he visited the
plaintiff several weeks after the Rubin moved into it. He
admitted knowing Horwitz but denied passing him and Harry
Rubin together. Horwitz had not testified to any such
occurrence. The testimony was that while he and the defend-
ant were together they had met the plaintiff, - not Harry
Rubin. The defendant admitted having a conversation with
the plaintiff but emphatically when he claimed Horwitz was not
present, and he said he told the plaintiff in that conversa-
tion that he had sold his property to a man named Rubin and
that Rubin had sold it to Harry Rubin, and he told the plain-
tiff that he (the plaintiff) never introduced Harry Rubin.
The defendant testified that he did not talk to Horwitz about
the plaintiff's claim before he had this conversation with the
plaintiff, and that between the two present at the time of this
conversation.

The defendant testified that at the time he sold the
property to Harry Rubin, he had no information that the

latter had any connection with the plaintiff or that the plaintiff had shown the building or talked about it either to Harry Rubin or his wife.

On cross-examination the defendant denied the conversations testified to by Horwitz. He further testified that when he sold the property, his contract was supposed to be with Kaplan; and when the lawyer was drawing the contract Kaplan took the property in Harry Rubin's name, for some reason he could not find out; that Kaplan introduced Rubin to him (the defendant) but that Rubin did not ask anything about the price nor did he give him a price; that he never talked to Rubin but did talk with Kaplan who agreed to the price of \$26,200; that he never saw Rubin until they went to the lawyer's office to sign the contract closing the transaction. The defendant admitted he had paid no commission on this sale. He admitted he had made an agreement with Harry Rubin that if any commission was to be paid on the sale, Harry Rubin would have to pay it. He insisted that the man he was afraid of was Kaplan because he knew Kaplan was a real estate man, and when the contract was made out, calling for the sale being made to Harry Rubin, he suspected Kaplan would be calling for a commission, and that was why he had the contract provide that if any commission was to be made on the transaction, it must be paid by Harry Rubin.

One Gredson, a lawyer, testified that the contract for the sale of this property was executed at his office; that the defendant had discussed the deal with him a short time before that and when the deal was closed Harry Rubin was present and he thought Mrs. Rubin was also present. He

testified that at the time the defendant talked this deal over with him, prior to the occasion when the contract was executed, he asked the defendant who he was selling the property to and his recollection was that the defendant said Kaplan was buying the property. He was asked how he drew the contract showing Harry Rubin as the purchaser, and he answered that as he remembered it, when he started to dictate the contract Kaplan spoke up and told him to have Harry Rubin appear as the buyer. He testified that his client, the defendant, stated that he wanted to protect himself, and he called attention to the fact that Kaplan was a real estate man and he wanted to be protected on commissions.

Kaplan testified that he was in the real estate business, buying and selling for himself, but that he did not have a license as a broker in 1933; that he first met the defendant in 1932 when he was looking up property for sale, and he tried to buy the defendant's property but the defendant would not sell it because it was not completed; that the property looked as though it would suit him, and he returned the next day and saw the defendant again in an effort to buy it. He further testified that he made an appointment to close the contract "in a week's time," and in the meantime he found another piece of property which he liked better; and he then saw Harry Rubin and told him "I don't know what to do," - that he thought the defendant's property was a good buy but he had found some other property which he wanted to take and he told Rubin that if he wanted to buy the defendant's property he would be responsible for its

testified that at the time the defendant called him and
over the line, prior to the hearing, when the defendant was
examined, he asked the defendant who he was calling and
testified he was the defendant and that the defendant
told him that he was calling the defendant. He was asked how he
knew the defendant was calling him and he testified
that he answered that he was the defendant and that he
he directed the defendant to call him and told him to
have a very good night and he testified that
the defendant, the defendant, stated that he wanted to speak
himself, and he called attention to the fact that when
was a small child and he wanted to be protected
on the defendant.

Defendant testified that he was in the real estate
business, buying and selling for himself, but that he did
not have a license as a broker in fact; that he lived
and the defendant in fact when he was looking up property
for sale, and he tried to buy the defendant's property but
the defendant would not sell it because it was not completed;
that the property looked as though it would sell and he
returned the next day and saw the defendant again in his office
on May 1st, or thereabouts, and he was an employee
and he told the defendant "in a week's time," and in the
meantime he found several pieces of property which he listed
for sale and he told the defendant and told him "I don't
know what to do," - that he did not like the defendant's property
and a good boy and he was found some other property which
he wanted to take him in fact when that it he wanted to buy
the defendant's property he would be responsible for the

completion according to specifications, and Harry Rubin said he would let him know about it; that he made an appointment with Harry Rubin next day, to make a contract, and he decided to take the property and went to Gredson's office to close the deal. He testified further that he did not know the plaintiff at that time and that when the contract was drawn and executed, no mention was made of any claim for commissions by the plaintiff. The witness stated that no commission was allowed or paid to anyone on this sale from the defendant to Harry Rubin. He said he introduced Harry Rubin to the defendant at the time the contract was closed in the lawyer's office.

On cross-examination Kaplan was asked whether he made any money out of this transaction and he answered, "No, sir. He gave me -- I don't call this any money -- he gave me a per cent for my services, \$200.00. Mr. Harry Rubin, for my trouble, what I spend so much time on." He then testified that he went over and saw the defendant's building, to buy it himself, but he signed no contract and advanced no money, and before closing the deal he found another piece of property he liked better. He was asked whether he bought that other property and he said he did not, but he "sold it to a man on West Madison street." He said he felt it was up to him to sell the defendant's property for him and he then went and saw Harry Rubin and got him to buy the defendant's building. He was asked whether he heard the defendant tell the lawyer at the time the contract was closed, that the buyer of his

conclusive authority to establish the fact that
said he would let him know about it; that he would
arrange with him next day, to take a
trip, and he would let him know the property and what to
do. He then called on the day. He called to see
that he did not lose the property at that time and that
the contract was drawn and executed, he would not
make of any other for consideration by the plaintiff, the
attorney stated that he would not be allowed to take
any more on this case than the amount to carry on.
He said he intended to take on the payment of the
time the contract was closed in the lawyer's office.

An attorney-at-law was called who
he made any money out of the transaction and he stated,
"No, sir, he gave me -- I don't call this any money --
he gave me a bit more for my services, \$100.00, or more."
He then stated that he was over and saw the attorney
and he intended to pay it himself, but he signed the
check and received no money, and before signing the check
he looked another place at property he liked better. He
was asked whether he bought that other property and he
said he did not, but he said it was a lot of money. He
stated: "He said he told it was up to him to call the
attorney's property for him and he then went out and
he was asked whether he made the statement that the lawyer
at the time the contract was closed, that the lawyer at the

property was Harry Rubin, and he answered, "Yes, sir." He was asked if he ever took Harry Rubin over to see the defendant before they went to the lawyer's office and he said he did, about a week before. He was then asked if he had not just testified, on direct examination, that he introduced these parties for the first time at the lawyer's office, and he then explained, that when he took Harry Rubin over to the building he didn't see the defendant there.

Harry Rubin testified in behalf of the defendant that he first met the latter at the lawyer's office at the time the contract was executed; that Kaplan had talked to him about the property previously and that the first time he knew anything about the existence of this property was when Kaplan took him over to see it. He was asked if his wife had talked with him about it prior to his entering into the contract to buy it, and he answered that she never mentioned it to him. He was asked if she told him that the plaintiff had taken her over to look at the building and he said she had not "because I lived a distance from the store. * * * and she was in condition that she never come to the store;" and that she had not been there for a month or two before the contract was executed, and he first learned of the building through Kaplan, who came into the store one day and told him that he had made a deal with a contractor to buy a building which was under construction, and he was willing to guarantee that the construction would be completed properly, and that Kaplan came back a few days later and said he was in a little trouble; that he had made arrangements

property was being sold, and he answered, "Yes, sir." He
then said it was not long before they went to see the
lawyer, where they went to the lawyer's office and he
said he did, about a week before. He was then asked if
he had not just mentioned, in his last statement, that he
informed about the fact that the first time he saw the lawyer's
office, and he then explained, that when he was there
he went to the building he didn't see the defendant there.

Barry Robin testified in detail of the defendant
that he lived with the father at the lawyer's office at the
time the contract was executed; that again he talked to
him about the property given, and that the first time
he knew anything about the existence of this property was
when again took him over to see it. He was asked if
his wife had talked with him about it prior to his answer-
ing that the defendant was to pay it, and he answered that she
never mentioned it to him. He was asked if she said she
saw the plaintiff had taken her over to look at the build-
ing and he said she did not "because I lived a distance
from the store." He was then in condition with the next
question to the story; and when she was asked where the
plaintiff or her before the contract was executed, and he first
learned of the building through letters, and went into the store
and was told that she had made a deal with a contractor
to buy a building which was under construction, and he was
going to purchase that the construction would be completed
probably, and that again she had a few days later and said
he was in a little trouble; that he had made arrangements

for the contractor previously referred to to make a contract the following day, but he had found another piece of property to buy "and I think I will be short of money, and if you will be interested in this proposition I can show it to you and if you like it, I will transfer this deal over to you." He testified that he then went to the property with Kaplan and looked it over and inquired the terms on which it was offered for sale and Kaplan told him what the terms were and added, "now, if you like the building tell me and if not I can turn it over to somebody else;" that he asked Kaplan what he would take for the contract and Kaplan said he had not made any contract, and he then asked him what he would take for the trouble and Kaplan said whatever he, the witness, thought was right. He testified that he then called up the defendant and made arrangements for closing the contract. He was asked if his wife or anybody else had ever mentioned the plaintiff's name in connection with the property and he answered, "Never mentioned a word." He then said that when the deal was closed the defendant got suspicious of Kaplan, thinking he was an agent and would want a commission, and therefore the provisions already referred to, covering the question of commissions, was put in the contract.

On cross-examination this witness was asked what he paid Kaplan the \$200.00 for, and he answered, "If a man goes to a lot of trouble and works on it for a week or ten days and then comes to the conclusion I think it wasn't enough, \$200.00 He should have gotten more for it, especially when the building is under construction and he puts in a specification to make up everything short in the building." He was

Let the committee be only satisfied to be made a contract
the following day, and he was found working hard at property
the day, and I think I will be soon at work, and it will
be presented in the committee I was when it was made
at the time it, I think, I think this deal over to you, it
satisfied that he had been in the property with the
and looked it over and looking at the terms he was
different for him and looking at the terms he was
and said, "now, at the time the selling will be not it not
I can find it very in connection with the property
that he would not for the committee and looking at the
and then very much, and he then asked him what he would
take for the property and looking at the terms he was
now, looking at the terms he was, he looked at the terms he was
the committee and then afterwards for looking at the terms
he was asked if he was of property and he was asked
the committee's was in connection with the property and
he answered, "I never thought of it." He then said that
when the committee was asked the committee for looking at
the terms, thinking he was an agent and would want a commission,
and the committee was looking at the terms he was, thinking
the committee of property, was not in the committee.

On the committee this afternoon he asked what he
paid for the property, and he answered, "It was not
to a lot of property, and he was asked if he was of the
the committee for the committee I think it was not
\$100.00 he would have asked more for it, especially when
the property is not wanted and he was in a position
also he was in everything about the property." He was

asked if he made Kaplan a present of the \$200.00, and he said he did. He further testified that he never heard of the plaintiff until several months later, and had never seen him in his store or anywhere else before that. He further testified on cross-examination that his wife had not been in the store for 8 months, and a few lines farther on, in the record, is an admission that she was in the store in December and also in November, but he said that was "about the last month." It appears she had a child born sometime in the spring or late winter. This witness further stated on cross-examination that his wife had not been over to look at the building. He was asked if his wife had any money of her own and he said she had not. He said he knew nothing whatever about her going over to look at the building. He was asked on cross-examination whether he knew that if the defendant was required to pay the commission for which he was being sued, he would turn around and sue the witness for it, and he answered, "Absolutely." Further, in cross-examination, this witness testified that when they were in the lawyer's office to close the deal and sign the contract the defendant spoke up and said, "I don't want Kaplan in the contract." He was then asked: "And you had not told Hyman Rubin (the defendant) that you were going to be the buyer, up to that time had you?" and he answered, "No sir."

The foregoing statement of the substance of the testimony of the various witnesses will not require extended analysis or comment. According to the defendant and Kaplan, the former never heard of Harry Rubin until Kaplan introduced him to the defendant at the lawyer's office, but

which it is well known a person of the kind, and
he said he did. He further testified that he never heard
of the defendant until several months later, and that never
saw him in his store or anywhere else since then. He
further testified on cross-examination that his wife had not
been in the store for 2 weeks, and a few lines farther on,
in the record, in an addition that she was in the store in
November and also in December, but he said that was "about
the last week". It appears she had a child born sometime
in the spring or late winter. This witness further stated on
cross-examination that his wife had not been over to look
at the building. He was asked if his wife had any money
of her own and he said she had not. He said he knew nothing
whatever about her going over to look at the building. He
was asked on cross-examination whether he knew that if the
defendant was required to pay the mortgage for which he was
being sued, he would have money and was the witness for it,
and he answered, "Probably". Further, in cross-examination,
this witness testified that when they were in the lawyer's
office to make the deal and sign the contract the witness
said to him and said, "I don't want to sign in the contract."
He was then asked: "And you did not sign?" (The
defendant) that you were going to be the buyer, up to that
time had you?" and he answered, "No sir."

The foregoing statement of the witness at the
testimony at the various sittings all was read and attached
thereto as correct. According to the defendant and his
the former never heard of Henry until after the
time he was arrested as the lawyer's client, and

when the defendant's witness, Harry Rubin, testifies he says that he called up the defendant after he had agreed to take the property and the defendant "told me he would go the following night to sign the contract," and he, the witness, then called up his lawyer and arranged for the conference at the office of the defendant's lawyer. Although Kaplan admits that he was not in the real estate business as a broker when this contract was made but that his arrangement was to buy the property himself, the explanation of the clause in the contract about commissions is that the defendant was afraid of Kaplan, and although Kaplan admits that he had made no contract to buy the property and had paid nothing down on it, he went to Harry Rubin and got him to buy the property because he, Kaplan, had found another piece of property that he liked better; and then he admits that he didn't buy the other property but sold it to someone else. His testimony as well as that of Harry Rubin gives the impression that when Harry Rubin concluded to take the defendant's property, he was doing Kaplan a favor, and yet it appears that he paid Kaplan \$200.00 for doing him that favor. It is difficult to see how one could possibly read this testimony without coming to the conclusion that Kaplan was representing Harry Rubin all through the deal and when the clause about commissions was put in the contract, at the defendant's request, he was seeking to protect himself, not against Kaplan but against the plaintiff. To set forth all the inconsistencies in the defendant's position and all the material discrepancies of the testimony of himself and his witnesses, would extend this opinion beyond a reasonable length, nor is it necessary to do so, because these matters

When the defendant's witness, Harry Rubin, testified he
says that he called up the defendant after he had returned
to the New York City and the defendant said he would
be the only one to sign the statement, and he, the
defendant, then called on his lawyer and arranged for the con-
tinuation of the action of the defendant's lawyer. Although
Rubin states that he was not in the New York City Court
as a witness when this contract was made but that his lawyer
went with him to the court and signed the statement on his
behalf in the court of the defendant is not the defendant
and was a friend of Rubin, not a friend of Rubin's lawyer.
He had made no contract to buy the property and had paid
nothing down on it, he went to Harry Rubin and got him to
buy the property because he, Rubin, had found another place
at property that he liked better; and then he called him to
district but the other witness had said it was a contract.
The testimony as well as that of Harry Rubin shows the in-
formation that when Rubin called on the defendant to continue
action that he had called Rubin a lawyer, and yet it
appears that he had called Rubin a lawyer, and yet it
is difficult to see how one could possibly read this
testimony without coming to the conclusion that Rubin
was representing Harry Rubin all through the trial and when
the defense asked questions we put in the context of the
defendant's request, he was seeking to protect himself, not
to get for all
the information in the defendant's position and all the
material disclosure of the testimony of Rubin and
his witness, would stand this case as beyond a reasonable
doubt, and is at least a very strong case.

are quite apparent from a mere reading of the testimony. It may be said that the testimony given by Mrs. Harry Rubin, who was called as a witness by the plaintiff, was not such as to support the plaintiff's contentions. It is clear, however, that this witness was a hostile witness who was making every effort to protect the defendant because she realized that under the terms of the contract, any commission the defendant might be obliged to pay the plaintiff, would ultimately come out of her husband. Not only may it not be said that the verdict is against the manifest weight of the evidence, as contended by the defendant, but in our opinion, the evidence is such that no other verdict than the one returned, would be possible.

The defendant complains that the court permitted the plaintiff to testify, over defendant's objection, to the names of persons he had taken to look at the defendant's building. It is contended that this testimony was immaterial and prejudicial to the rights of the defendant. The plaintiff was asked, on direct examination, whether he had taken other people to see the defendant's building. The question was answered in the affirmative without objection, counsel for the defendant interposing the question, "When?" The plaintiff was then asked, presumably by his own counsel, how many different people he had taken over to the property, and he answered that he was not able to say how many, but it was quite a few. Then the record shows that counsel for the defendant interposed an objection and his objection was sustained. Later, while plaintiff was being examined by counsel for the defendant, the latter went into the

the Court's decision from a mere reading of the testimony.

It may be said that the testimony given by Mr. Barry

Robert, was not called to a witness by the Plaintiff, and was

such as to support the Plaintiff's contention. It is

clear, however, that this witness was a hostile witness

who was called every effort to prevent the Plaintiff from

being able to establish that under the terms of the contract

any conclusion the defendant might be obliged to pay the

plaintiff, would necessarily come out of his mouth, and

only way it can be said that the verdict is against the

plaintiff's view of the evidence, as contended by the defend-

ant, and in our opinion, the evidence is such that no other

verdict than the one returned, would be possible.

The defendant complains that the Court permitted

the Plaintiff to testify, over defendant's objection, to

the cause of action he had taken at the Plaintiff's

instigation. It is a settled rule that testimony was inadmis-

sible and inadmissible to the effect of the defendant. The Plaintiff

was asked, on direct examination, whether he had taken action

against the defendant's building. The question was

answered in the affirmative without objection, counsel for

the defendant interposing the question, "Why?" The claim

with the fact that, presumably either one counsel, how many

attorneys would he had taken over to the property, and

he answered that he was not sure he was not sure, but in

any case a Yes. Then the record shows that counsel

the defendant interposed an objection and was not

sustained. Later, while Plaintiff was being exam-

ined for the defendant, the latter went into the

himself and asked the witness a half dozen questions about it; and when the defendant took the stand, his counsel again referred to the question and asked the defendant whether the plaintiff brought other people over to see the building. On that record, the defendant is certainly not in position to allege that the trial court erred in the matter of this testimony. As will be seen from the above, the trial court sustained the only objection counsel for the defendant interposed in the matter.

The remaining point urged by the defendant has to do with instructions. It is contended the trial court erred in giving the jury an instruction to the effect that "If under the evidence in this case and the instructions of the court they find the issues in the case for the plaintiff, then and in such case they should allow the plaintiff the usual and customary charges for such services, as shown by the preponderance of the evidence, if any." That instruction was proper. The plaintiff testified that in his first talk with the defendant the latter told him that he would "pay me my usual commission," and he testified further that the usual and customary fees, charged by real estate brokers in the city of Chicago, in transactions such as the one involved here, was 3 per cent on the purchase price, where that was over \$10,000. No evidence was introduced to the contrary, as to what the usual and customary commission was, and it was for the jury to determine from the conflicting evidence, whether the defendant had promised to pay the usual and customary commission, as the plaintiff contended.

...and the
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the following order given to the defendant for the
to the instructions. It is contained in the trial court
first in giving the jury in instruction in the fifth and
It only the evidence in this case and the instructions
of the court that the law in the case for the plain-
ity, then and in each case they should follow the plaintiff
the court and the jury should follow the plaintiff, and
known by the instructions of the evidence, it says. That
instructions was proper. The plaintiff testified that in his
first trial with the defendant the first trial in that he
would "not say any more consideration," and he testified
further that the court and the jury were, and it was
before the jury in the city of Chicago, in connection with
as the one involved here, and I put out on the purchase
before, where that was over 10,000. The evidence was inter-
posed to the contrary, as in each of the cases and the
instructions, and it was for the jury to determine from the
testimony evidence, whether the defendant had provided
to pay the same and otherwise obligated, as the plaintiff

The defendant also complains of an instruction given by the court, telling the jury that while the burden of proof is upon the plaintiff and it was for him to prove his case as alleged in the declaration, by a preponderance of the evidence, still, if the jury found that the evidence bearing upon the plaintiff's case preponderated in his favor, "although but slightly, it would be sufficient for the jury to find the issues in his favor, and to find a verdict against the defendant." We have never known that stock instruction to be called in question before. The giving of the instruction was not error.

Complaint is also made of an instruction given by the court, telling the jury that if they believed from the evidence that the defendant authorized the plaintiff to find a purchaser for the property in question, and that the plaintiff accepted the employment and was the efficient or "producing" cause in bringing about a consummation of the purchase of said property, then the plaintiff would be entitled, in the absence of an express agreement, to the usual and customary charges made by real estate brokers in the city of Chicago at said time, as shown by a preponderance of the evidence, if any. It is contended that this instruction was erroneous in that it omitted the element of the terms or conditions of the alleged employment, and that before the plaintiff could recover, it was necessary for him to show that the property had been purchased by the buyer on terms theretofore agreed upon between the plaintiff and the defendant. In our opinion the contention is not sound.

The defendant also complains of an investigation given by the court, calling the jury that while the burden of proof is upon the plaintiff and it was for him to prove his case as alleged in the declaration, by a preponderance of the evidence, still, it was found that the witness hearing upon the plaintiff's case preponderated in his favor. Although not directly, it would be sufficient for the jury to find the answer in the favor, and to find a verdict against the defendant. We have never known that such investigation to be called in question before. The finding of the investigation was not error.

Complaint is also made of an investigation given by the court, calling the jury that if they believed from the evidence that the defendant authorized the plaintiff to find a purchaser for the property in question, and that the plaintiff accepted the employment and was the efficient "procuring" cause in bringing about a conveyance of the purchase of said property, then the plaintiff was liable. In the answer of an answer agreement, to the court and testimony of the court, a real estate broker in the city of Chicago at said time, as shown by a purchaser- one of the witnesses, at say. It is contended that this investigation was erroneous in that it omitted the element of intention or conditions of the alleged employment, and that before the plaintiff could recover, it was necessary for him to show that the property had been purchased by the buyer on terms favorable agreed upon between the plaintiff and the defendant. In our opinion the contention is not sound.

If, as the plaintiff's evidence tended to show, the defendant agreed to pay the plaintiff the usual and customary commission if he produced a purchaser of the defendant's property, and he named a price of \$26,500, and the plaintiff was the means of interesting Mr. and Mrs. Rubin in the property, and Harry Rubin bought it, but at a price of \$26,200 or \$26,300, the mere difference in the consideration paid for it would not defeat the plaintiff's right to a commission. The plaintiff's proof tended to show, not that the defendant agreed to pay a commission if someone was found and bought the property at \$26,500, but the plaintiff's testimony was to the effect that the defendant stated his property was for sale and that he would pay the plaintiff the usual and customary commission in case he found a purchaser, and when the plaintiff asked the defendant what his price was he named the figure, \$26,500. In other words, there is no evidence showing or tending to show that the defendant's agreement to pay the commission was conditioned upon his getting his asking price. Neither is there any evidence in the record showing or tending to show that after the plaintiff had interested Mr. and Mrs. Harry Rubin in the property, they abandoned the idea of buying it, and that their ultimate purchase of the property was due to the efforts of Kaplan or anybody else.

The defendant also complains of another instruction given by the trial court, in which the jury were told that if they believed from the evidence that the defendant employed the plaintiff as his agent to negotiate a sale of the defendant's property, and the plaintiff undertook said employment and was the efficient or pro-

curing cause in bringing the defendant and the buyer together, then the plaintiff would be entitled to recover a commission from the defendant, "regardless of the fact that the defendant concluded the sale." Again, the complaint made of this instruction is that it fails to set forth that the purchaser took the property on the terms agreed upon between the defendant and the plaintiff. We have above stated the reasons why we think that objection is untenable.

The defendant also complains of the action of the trial court in refusing three instructions tendered by the defendant. The first one of these instructions sought to tell the jury that if they believed from the evidence that the defendant sold the property himself "without the help or efforts of the plaintiff," then they should find the issues for the defendant. While, strictly speaking, that instruction stated the law correctly, we are of the opinion the trial court properly refused it in this case, because, under the evidence which was before the jury, it was quite likely to be misleading. In one view of the situation disclosed by the evidence the jury might believe that when the defendant sold the property to Harry Rubin he did it "without the help or efforts of the plaintiff." But that would not be the true situation if the jury further believed, as the plaintiff's evidence tended to show, that the plaintiff was the one who brought the attention of the buyers to the property, and their ultimate purchase of it was due to that fact. Another instruction tendered by the defendant and refused by the court, sought to instruct the jury that the plaintiff could not recover un-

having done in bringing the witnesses and the paper together
that the plaintiff would be entitled to recover a commission
from the defendant, 'supposed to be the fact that the defendant
had committed the crime,' 'that the plaintiff made of this
testimony is that it fails to say that the defendant
had the money in the house at the time between the
defendant and the plaintiff. It does not say the money
was in the house at the time the defendant was arrested.

The defendant also complains of the action in
the fact that in bringing the witnesses and the paper together
by the defendant. The first one of these last questions
ought to be the fact that the plaintiff believed from the
evidence that the defendant sold the money himself
without the help or effort of the plaintiff. Then say
again that the defendant for the defendant. Well, finally
saying, that the plaintiff stated the law correctly, we are
of the opinion the plaintiff must properly recover in this case.
Because, under the evidence which was before the jury, it
was quite likely to be misleading. It was also of the
evidence stated by the evidence the jury might believe
that when the defendant sold the money to the plaintiff
he did it without the help or effort of the plaintiff.
But that would not be the fact stated in the fact
which followed, as the plaintiff's evidence failed to
show that the plaintiff was the one who brought the action
of the money to the plaintiff, and their witness pur-
chase of it was one to that effect. Another question
arising from the defendant and raised by the court, ought
to involve the fact that the plaintiff could not recover the

less he had proven by a preponderance of the evidence that he first introduced the purchaser or purchasers of the property in question to the defendant, and that the sale of the property was brought ^{about} through the efforts of the plaintiff.

That instruction was subject to the same objection as the last one referred to. It contains a correct general statement of the law, but, as applied to the evidence in this record, it would be quite likely to be misleading. It is admitted that the plaintiff did not introduce Harry Rubin personally to the defendant, but if, as he contends, and as the evidence submitted in his behalf tends to show, he took Mrs. Rubin over to see the property and introduced her to the defendant, and she was there both in her own behalf and that of her husband; and he had stated he would take the property if it was satisfactory to her; and this led to the purchase of the property by him; the plaintiff would be entitled to his commission even though he had not introduced the purchaser, Harry Rubin, personally, to the defendant.

The third instruction tendered by the defendant and refused by the court, was one in which it was sought to have the court tell the jury that preliminary to their being accepted as jurors, they had been examined by counsel for the respective parties as to their qualifications, and in that connection, they had answered the various inquiries made to them and their answers showed that they were duly qualified; and they had been accepted by the parties, to act as jurors, on the basis of their answers, and further, that the answers they had made to the questions asked of them as to their "competency, qualifications, fairness,

that he had given by a statement of the witness that he
 in connection with the evidence, and that the sale of the pro-
 perty was made ^{about} during the time of the sale.
 That statement was subject to the same objection as the
 first one referred to. It contained a serious factual error
 and of the law, but as applied to the evidence in this
 regard, it would be quite likely to be misleading. It
 is admitted that the plaintiff did not introduce any other
 personally to the defendant, but it is also admitted, and as the
 witness admitted in the first place, that he took
 the same over to see the property and returned it to the
 defendant, and that the same person carried out the property
 of the defendant; and he had stated he would take the property
 it is not satisfactory to say; and that led to the purchase
 of the property by him; the plaintiff would be entitled to
 his money back even though he had not introduced the prop-
 erty, and that, personally, to the defendant.

The third instruction referred to by the defendant
 and returned by the court, was one in which it was sought
 to have the court tell the jury that exclusively to their
 mind should be turned, that had been received by the court
 for the respective parties as to their qualifications, and
 in that connection, that had received the various instructions
 made to them and their answers showed that they were fully
 qualified; and they had been received by the parties, to
 act as jurors, and the facts of their conduct, and further,
 that the court had made to the respective sides of
 them as to their competency, qualifications, and fitness.

lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then and should so remain until you are finally discharged from further consideration of the cause. It would be improper for you to disregard the answers that rendered you competent jurors.* While the giving of that instruction would have been proper, its refusal by the trial court would not justify disturbing the verdict and judgment appealed from. In view of all the evidence, we are unable to see how the action of the court, with regard to this instruction, could have by any possibility prejudiced the defendant.

For the reasons stated the judgment of the County Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR AND O'CONNOR, JJ. CONCUR.

321 - 30074

EASTERN FELT COMPANY,
a corp.,

Appellee,

v.

U. S. AYER,

Appellant.

585/c
240 I.A. 670

APPEAL FROM

MUNICIPAL COURT,
OF CHICAGO.

Opinion filed Feb. 3, 1926.

MR. JUSTICE TAYLOR delivered the opinion of
the court.

On April 30, 1924, the plaintiff, the Eastern
Felt Company, brought suit in the Municipal Court against
the defendant, U. S. Ayer, as endorser of a promissory
note for \$1,000.00; and, upon a trial, without a jury,
recovered a judgment in the sum of \$1158.75. This appeal
is from that judgment.

The note in question is as follows: "Chicago,
March 9, 1922. Twenty four months after date we promise
to pay to the order of Eastern Felt Company One Thousand
* * * Dollars, at Winchester, Mass. * * * (Signed)
Bennett O'Connell Co. U. S. Ayer, Pres." Endorsements
on the back of the note are as follows: "U.S. Ayer, Eastern
Felt Co., By Thos. J. Donnelly, Treas."

There is no controversy as to the authenticity

2401 A. 670

ATTEST

NOTARY PUBLIC

OF ILLINOIS

Opinion filed Feb. 3, 1936.

ASSISTANT ATTORNEY GENERAL
STATE OF ILLINOIS

Attorney General

W.

W. A. RYAN

Respondent

NO. 100101 FAVORABLE DELIVERED THE OPINION OF

THE COURT

ON APRIL 22, 1936, THE PLAINTIFF, THE FIRST

NATIONAL BANK, BROUGHT SUIT IN THE CIRCUIT COURT AGAINST

THE DEFENDANT, W. A. RYAN, AN INDIVIDUAL, A PERSONAL

NOTE FOR \$1,000.00, AND, WHEN A JURY, WITHOUT A JURY,

RECOVERED A JUDGMENT IN THE SUM OF \$1188.75. THIS JUDGMENT

IS NOW BEING ENFORCED.

THE NOTE IN QUESTION IS AS FOLLOWS: "Chicago,

March 3, 1935. Twenty Five hundred after date we promise

to pay to the order of Eastern First National Bank of Chicago

" \$1,000.00, at Chicago, Ill., on or before March 3, 1936."

Witness my hand and seal this 3rd day of March, 1935.

At the foot of the note are the following: "W. A. Ryan, President

First Nat. Bank of Chicago, Ill."

There is no controversy as to the authenticity

execution, endorsement, and delivery of the note. The contest here is whether the plaintiff complied with the requirements of the law of the State of Massachusetts as to presentment for payment and notice of dishonor, so as to hold the endorser, the defendant; or whether those requirements were legally waived.

It is the theory of the plaintiff that the evidence shows such knowledge and conduct on the part of the defendant that the formal acts of presentment for payment, and formal notice to him of dishonor were unnecessary. The theory of the defendant is, that there was neither proof of presentment nor of notice of dishonor; nor proof of waiver of either.

The evidence for the plaintiff consists of the testimony of Edgar J. Phillips, and certain exhibits. The substance of the testimony of Phillips is as follows: - Early in March, 1922, having received a letter from the plaintiff, his client, he wrote to Bennett-O'Connell Company, of which Ayer was president, and a few days afterwards, the defendant called at the witness's office. At that meeting he told the defendant that the plaintiff had sent him, the witness, about \$4,000.00 of trade acceptances upon the Bennett-O'Connell Company for merchandise which were past due, and that the plaintiff, also had sent him a circular that he, the defendant, had sent out to his creditors, suggesting a composition of the creditors of the defendant, the Bennett-O'Connell Company, which involved taking preferred stock in the defendant's company. He told the defendant that the plaintiff was not willing to do that, but had instructed him to commence suit; that the

...and delivery of the note. The
...is written the plaintiff's motion with the
...of the law of the State of Massachusetts as
...to present for payment and notice of dishonor, so as
...to bind the defendant, the plaintiff or either of them
...thereby to pay the same.

It is the theory of the plaintiff that the
...does not constitute and conduct on the part
of the defendant that the formal note of presentment for
payment, and formal notice to him of dishonor were not
necessary. The theory of the defendant is, that there
was neither proof of presentment nor of notice of dish-
onor; nor proof of waiver of either.

The witness for the plaintiff consists of the
testimony of John A. Sullivan, and certain exhibits. The
substance of the testimony of Sullivan is as follows: -
Early in March, 1881, having received a letter from the plain-
tiff, his client, he wrote to Robert O'Connell Esq., of
which firm was president, and a few days afterwards, the
defendant called at the witness's office. At that meeting
he told the defendant that the plaintiff had sent him
the witness, about \$5,000 of trade acceptances upon the
Robert O'Connell Esq. for endorsement which were
paid him, and that the plaintiff, also had sent him a
certain sum of money, the defendant, but sent not to him
certainly, suggesting a conversation at the residence of the
defendant, the defendant, Esq., which involved
being mistaken stock in the defendant's company. He
told the defendant that the plaintiff was not willing to do
that, but had instructed him to purchase with that the

defendant told him, the witness, that if he would accept an initial payment of \$600.00 in cash, he would give him a series of notes providing for the payment of \$500.00 every two months, and the balance to be paid in twenty-four months. The defendant, also, asked the witness to inquire whether the plaintiff would accept the return of certain merchandise. The witness wired the plaintiff, and, upon receiving a reply a few days later, he informed the defendant that the plaintiff would not accept the wheels (the merchandise) but that they would accept the cash and notes with his endorsement," and would cancel the \$4,000.00 of trade acceptances. The defendant, said that that was satisfactory to him, and, accordingly, he, the witness, prepared the notes, four or five, in the defendant's presence, and the defendant then made a cash payment of about \$600.00. That occurred on March 9, 1922. One of those notes was the note in question and was endorsed by the defendant before it was delivered, and still remains unpaid. The interest on it, up to October 31, 1924, amounts to \$158.75. The first note, being for \$500.00 fell due in June, 1922, and he, Phillips, called up the defendant almost daily from June 9 to June 30, in regard to its payment, and the defendant finally paid it on June 30. That note bore the endorsement of the defendant on its back. In talking with the defendant between June 9 and June 30, he, the witness, frequently told the defendant that he would have to proceed against him on his endorsement, and the defendant invariably suggested that if he would give him a chance to work out of his difficulties the company would be able to take care of the notes, and, further, requested that he, the witness, would not proceed

defendant told him, the witness, that if he would accept
an initial payment of \$500.00 in cash, he would give him
a series of notes providing for the payment of \$500.00 every
two months, and the balance to be paid in twenty-four months.
The defendant, also, asked the witness to indicate whether
the plaintiff would accept the return of certain merchandise.
The witness stated the plaintiff, and, upon receiving a
reply a few days later, he informed the defendant that the
plaintiff would not accept the merchandise (the merchandise) but
that they would accept the cash and notes to the end of the
month, and would cancel the \$500.00 of cash payment.
The defendant, also, said that was satisfactory to him, and,
accordingly, he, the witness, prepared the notes, first on
five, in the defendant's presence, and the defendant then
made a cash payment of about \$500.00. That occurred on
March 9, 1937. One of these notes was the note in question
and was endorsed by the defendant before it was delivered,
and still remains unpaid. The interest on it, up to August
21, 1937, amounts to \$125.75. The first note, being for
\$500.00, fell due in June, 1937, and he, William, called
up the defendant almost daily from June 9 to June 20, in
regard to its payment, and the defendant finally said it
on June 20. That note bore the endorsement of the defendant
and on the back. In talking with the defendant between
June 9 and June 20, he, the witness, frequently told the
defendant that he would have to proceed against him on his
endorsement, and the defendant invariably answered that it
would give him a chance to work out of his difficulties
the company would be able to take care of the notes, and,
further, requested that he, the witness, would not proceed

against him.

The next note became due September 9, and was taken up and paid. The next note became due December 9, and he, Phillips, called up the defendant several times, and told him he would have to bring suit against him. The defendant kept promising from day to day that he would send a check. On December 27, 1922, the witness started suit, in the Municipal Court, against the defendant on that note. He called up the defendant and told him that he had begun suit. On January 5, 1923, the defendant told him, the witness, that he was working out a plan to pay his debts, and said that he would send a check by special delivery to him that day, and a check was, accordingly, sent and received.

The fourth note was given to counsel for the defendant, and was not produced. Concerning the payment of that note, he, the witness, had a conversation with the defendant, or with his counsel. On December 9, the defendant called on him, the witness, and said that the reason the Bennett-O'Connell Company could not pay those notes was because they had so many outstanding accounts themselves, and asked him, the witness, if he would be willing to take some of the accounts in payment of the notes. He told the defendant that he would not, but that he would try to collect them and credit on the notes anything that might be collected. The defendant gave to him, the witness, two accounts, each for \$500.00, and directed him to start suit for them. Both those accounts were collected, one for the benefit of the Bennett-O'Connell Company, and the other for the defendant.

against him.

The next note bears date September 3, and was
taken up and paid. The next note bears date December 8,
and he, Williams, called up the defendant several times,
and told him he would have to come and sign the note.
The defendant kept postponing, from day to day, that he would
sign a check. On December 27, 1925, the witness stated
that, in the morning, he called on the defendant on that
note. The defendant told him to come and sign the note
before 11. On January 2, 1926, the defendant told him
that he was waiting out a fine to pay his debt.
and told that he would send a check by special delivery
to him that day, and a check was, accordingly, sent and
received.

The fourth note was given to counsel for the
defendant, and was not received. Concerning the payment of
that note, he, the witness, had a conversation with the
defendant, or with his counsel. On December 8, the witness
was called on him, the witness, and told him to come and
sign the note. He, the witness, told him that he would
send him a check by special delivery, and
called him, the witness, if he would be willing to sign the
note. He told the defendant
that he would not, but that he would try to collect from
him and collect on the note nothing but what he collected.
The defendant came to him, the witness, two months, or so
for \$200.00, and showed him to what was for that. Both
those amounts were collected, and for the benefit of the
defendant, and the other for the witness.

The latter was for \$500.00, which he, the witness, turned over to the defendant. After calling up the defendant practically every day for the payment of the fourth note, and beginning suit on it, it was paid in the latter part of 1923.

Apparently, some time shortly after March 31, 1923, he, the witness, received a letter from the defendant (the letter is not dated), signed U. S. Ayer, Receiver of the Bennett O'Connell Co. That letter recited that on March 31, 1923, the defendant had been appointed Ancillary Receiver of the Bennett-O'Connell Company and the Ayer -O'Connell Manufacturing Company, on a bill filed in the United States District Court in the District of Connecticut. That letter contained the following: "You will please make your proof of claim to me by a verified statement of your claim, which may be filed with me at the address given below. "Upon receipt of the letter, he (the witness) called up the defendant, and expressed his surprise at receiving it in view of the fact that two days before he had sent in the proceeds of the Hammond Brass Company's payment, at the defendant's request, and at the same time he was indebted to him, the witness's client, on the past due note. He told him, further, that he intended to look to him, the defendant, personally, for the payment of the note. He received, the time is not stated, a notice dated December 12, 1923, signed by the defendant as Receiver, informing him that all those having claims against the Bennett-O'Connell Company must present them, duly verified, to the defendant, the Receiver, on or before December 31, 1923; otherwise they would be barred from par-

[illegible]

ticipation in the assets of the Company. In response to that communication, he, the witness, prepared a claim and mailed it to the defendant. On March 8, 1924, which was Saturday, he wrote to the Bennett-O'Connell Company, at its address in Chicago, notifying that Company that its note (the note in question) to the Eastern Felt Company, the plaintiff, for \$1,000.00 plus interest, would become due and payable at his, the witness's office, on March 9, and requesting that it be taken care of without fail. On Monday March 10, he telephoned the defendant and asked him if he had received the letter, and whether or not he was sending a check, and the defendant said he had not received the letter; that he then told the defendant that the final note for \$1,000.00 - the one here in question - became due the day before on Sunday, and that he would have to have a check on it immediately. The defendant said that the concern was in bankruptcy or receivership, and "asked him to hold off and give him a chance, so that the company could make payment instead of going after him personally." He, the witness, told the defendant that that could not be done; that the Company would not have taken the note unendorsed. The defendant said he would take the matter up with his counsel, and get in touch with him, the witness, in a day or so. Shortly afterwards, he, the witness, instituted the present suit on the note in question. Sometime in March or April, 1923, the defendant told him the receivership was simply a friendly matter; that it did not mean that the Company would not pay its bills, and that the claims should all be presented to him as Receiver. He, the witness, told the defendant that he had all the notes here, and that they would have to be paid here; that the defendant said, "All

testified in the summer of the same year. In testimony he
that communication, he, the witness, witnessed a claim and
called it to the attention. On March 6, 1914, when the
company, he wrote to the General-Comptroller, at its
address in Chicago, notifying that company that the note
(the note in question) to the Eastern Bell Company, the
plaintiff, for \$1,000.00 plus interest, which became due
and payable on March 1, 1914, was assigned to him, and
testifying that it is the same note of which he testified
before the jury. He also testified that the note was not
paid to him but remained in the hands of the company or not
he was reading a check, and the defendant said he had not
received the interest; that he then told the witness that
the final note for \$1,000.00 - the one which is in question -
because the day before on Sunday, and that he would have
to have a check on it immediately. The defendant said that
the witness was in partnership or partnership, and "where
him to hold off and give him a check, so that the company
could have payment instead of being after his partnership."
He, the witness, said the defendant said they could not be
done; that the company would not have taken the note un-
derwritten. The defendant said he would take the matter up
with his counsel, and was in touch with him, the witness,
in a few days. Shortly afterwards, he, the witness, testi-
fied the witness said on the note in question. Sometime
in March or April, 1914, the defendant told him the witness
that the company was a "family matter"; that it was not worth
the company would not pay the bill, and that the witness
should all be presented to him as a partner. He, the witness,
said the defendant said he had all the notes here, and that they
would have to be paid here; that the defendant said, "I'll

right, to present the notes to him as receiver in the form of a verified claim." "And along when the last note became due I spoke to him about paying it and he told me it was on file over there, I told him he had to pay my client; I told him I had put my client off, as he had requested, for three or four months before that and that he had not paid anything on that note, that we could not let the matter drag along that way. I had a copy of the note being sued upon here, and mailed it to him in December, 1923. And we had received nothing of it, and that as much as I disliked to do so, I would have to start suit against him." The defendant was the executive officer of the defendant's business, the Bennett-O'Connell Company. The note in question which is the subject of this suit, was sent to him, the witness, a year before its maturity, at the time the plaintiff received notice of a receivership. He told the defendant he had the note here in Chicago. The three checks given in payment of the first three notes, were drawn by the Bennett-O'Connell Company, to the order of the plaintiff; the fourth, being for \$167.11, was payable to the plaintiff's attorneys, was dated August 18, 1923, and signed by the defendant as Receiver.

The plaintiff called the defendant Ayer, under Section 33 of the Municipal Court Act. His testimony is substantially as follows:- He was President of the Bennett-O'Connell Company, and is now the receiver, being appointed March 29, 1923. He did not know who was the moving party in creating the receivership; that it started spontaneously to protect the creditors and stockholders, and whether it

right, in giving the notes to him as received in the form of a written order. "And I think that the last note he gave me I wrote as his agent, and he said so to me on this very point. I said to him that he was my agent; I told him I had not yet signed it, as he had requested, for some of your friends before that and that he had not made anything of that note, and we could not let the matter drop along that way. I took a copy of the note and sent it to him, and he said it to him in December, 1922. And we had received nothing of it, and this is what we decided to do, I would have to state with respect to the The National was the executive officer of the National Business, the National Business Company. The note in question was in the subject of this note, and was sent to him, the witness, a year before the meeting, at the time the National received notice of a meeting. On this day, according to the note here in Chicago. The note was given in payment of the first note, and was given by the National Business Company, at the order of the National, the note being for \$100,000, and was given to the National Business, and given about 18, 1922, and signed by the National Business.

The witness called the document that, under question to the witness, and said. His testimony is substantially as follows: He was treasurer of the National Business Company, and in the summer, being associated with him, he did not know who was the acting party in creating the corporation; that it was created spontaneously to protect the creditors and shareholders, and whether it

was a friendly receivership, he was not able to state. There were two receiverships, one in the east and one here, and he was made receiver in both cases. As he understood it, the receivership was resisted. The letter of March 8, (record recites March 29) came into the office of the company, but he would not see it unless it were important. The original letter did not come to his notice or knowledge. He had Mints, the auditor, turn over to Phillips some claims, and Mints received a remittance on some collections. The notice of December 12, 1923, to file claims with him as receiver was sent out through his direction, and a claim from the plaintiff came in, but personally he did not see it, though, he testified, "I believe I have seen the claim of the Eastern Felt Company in connection with the receivership." The note in question was not with the claim. The note bears his signature. He signed it on behalf of the Bennett-O'Connell Company, as president, and signed it as endorser. When asked if a copy of the note was filed with him as receiver, he answered that he could not say whether it was or not. He was appointed receiver on March 29, 1923. After he was appointed receiver, he alone had authority to sign checks. If there were any payments made on the notes referred to after March 29, 1923, they were paid through the company by him as receiver. He knew that Phillips had several notes, as attorney for the Eastern Felt Company, and that he was demanding payment on them as they fell due from time to time. Phillips talked to him about the matter only once, but talked chiefly with Nicholson, the Treasurer. Phillips did not talk with him, Ayer, after he was appointed receiver.

was extremely confidentially, he was not told to report.
There were two investigations, one in 1921 and one
later, and he was quite confident in both cases. In the
latter, the investigation was made. The father of
Mrs. F. (referred to as Mrs. F.) was the father of the
company, and he would not see it unless it was important.
The original letter did not come in his name or name-
less. He had signed, the letter, then over to Phillips
some other, and after receiving a letter from some other
firm. The name of Phillips is, 1921, to the office of
him as receiver was sent out through his direction, and a
copy of the letter was in, but personally he did
not see it, though, he testified, I believe I have seen the
letter of the Eastern Life Company in connection with the
investigation. The name in question was not with the firm.
The name bears his signature. He signed in on behalf of the
Executive Company, as president, and signed it as
executive. When asked if a copy of the note was filed with
him as receiver, he answered that he would not say whether
it was or not. He was appointed receiver on March 22, 1921.
After he was appointed receiver, he alone has authority to
sign checks. If there were any payments made on the note
related to after March 22, 1921, they were not through the
agency of him as receiver. He knew that Phillips had several
notes, as attorney for the Eastern Life Company, and that
he was conducting business on them as that till the time
he died. Phillips talked to him about the matter only once,
but talked mainly with Phillips, the treasurer. Phillips
did not talk with him, but, after he was appointed receiver,

He did not know what notes were still outstanding when he was appointed receiver, although he knew that the \$1,000 note in question had not been paid by Bennett-O'Connell Company. He did not know that before it fell due. On March 11, 1924, a letter signed by the defendant as receiver for the Company and containing the initials U.S.A. was sent to Phillips, law firm, and contained the following:- "Your letter of the 8th inst. just received today, beg to advise that I am forwarding same to my attorneys * * *, and will you please communicate with them relative to same." He knew that the claim of the plaintiff on the \$1,000 note was filed by him as receiver in the Federal Court.

His evidence when he testified in his own behalf is substantially as follows: - The merchandise which the Bennett-O'Connell Company bought, and which was the consideration for the note in question, consisted of felt wheels. Since he, the defendant, was appointed receiver, he has been conducting the business of Bennett-O'Connell buying and selling goods, and paying for them. It has conducted a larger volume of business since he became receiver than it did before his appointment. He denied that Phillips telephoned him in June, 1922, that a note was due on June 9th, or that Phillips talked with him almost every day from June 9 to June 30 about payment of a note; denied that on or about December 19, 1922, in a telephone conversation with Phillips, the latter said he would have to bring suit against him; denied that on January 5, 1923, he told Phillips that he was working out a plan to pay all his debts, and for him to give the company a chance and not go for him; denied that on Jan-

He did not know what would happen with the investigation then he was
appointed receiver, although he knew that the \$1,000,000
in question had not been paid to General D'OConnell Company.
He did not know that before it had been paid to him, in 1906,
a letter signed by the Receiver of the Company for the Company
and containing the initials D.O., was sent to William, Jan
Giles and contained the following: "Dear father of the ship
Giles, your money is being paid to you today, and to others who I am
and more to my friends." "I am all your friends naturally
and with this reference to you." He knew that the claim
of the Receiver on the \$1,000,000 was filed by him as
Receiver of the General Company.

His evidence when he testified in his own
case is substantially as follows: - "I was
with the General D'OConnell Company before, and which
was the corporation for the ship in question, consisted
of five people, since he, the defendant, was appointed
receiver, he had been conducting the business of General
D'OConnell Company and selling goods, and paying for them.
It has conducted a larger volume of business since he
became receiver than it did before his appointment. He
knew that William's telephone was in New York, and a
call was made on June 2nd, or that William called on his
almost every day from June 3 to June 10 about 1906, and
a note; he did not at that time know, in 1906, as a
telephone conversation with William, but later on as
would have to bring him and others that would be
January 2, 1906, he said that he was waiting
out a plan to pay all his debts, and for him to give the
company a chance and not go for him; he said that he had

uary 5, 1923, he called Phillips up and said he would send him a check by special delivery that day. That conversation, he intimated, must have taken place between Phillips and Nicholson, the treasurer of the company; that Nicholson or Mintz were handling the accounts. He had nothing to do with the bills payable at all during the whole year of 1923, until after his appointment as receiver. He denied that Phillips, between March 9 and the end of March, 1923, called him up every day for a check; denied a conversation with Phillips in regard to certain collections. He had a conversation with Phillips in which he told him they had some accounts and he would have Mintz take the matter up with him, Phillips, but that nothing was said at that time to the effect that the proceeds of those accounts might be applied on the plaintiff's note. He denied that Phillips called him up on the telephone and expressed his surprise at receiving a notice of the receivership, and denied that shortly after the sending of the notice of the receivership, Phillips told him that he intended to look to him personally for the payment of the note, on his endorsement. He had no conversation and no communication with Phillips after he was appointed receiver. The company at the time of the receivership had assets equal to twice its liabilities. No distribution or dividends have been made by him as receiver of the company, and no general creditors have been paid their accounts. The liability of the company at the time he was appointed receiver, amounted to about \$29,000.00. Certain so-called inter-accounts have been paid amounting to

July 2, 1903, he called Phillips up and said he would
send him a check by postal delivery that day. That
afternoon, he indicated, that day when that postal
delivery and collection, the treasurer of the company, had
indicated he was not making the account. He had
written to him with the bill payable at his house the
whole day of 1903, until after his appointment as tre-
asurer. He called that Phillips, before that day
the end of March, 1903, called him up every day for a
check; called a conversation with Phillips in regard
to certain collection. He had a conversation with
Phillips in which he told him that he had some accounts
and he would have him take the matter up with him,
Phillips, but that matter was not at that time to the
effect that treasurer of these accounts might be called
on the Phillips' name. He stated that Phillips called
him up on the telephone and expressed his surprise at not
receiving a notice of the treasurer, and that he
stated after the sending of the notice of the treasurer,
Phillips told him that he intended to look to him personally
for the payment of the debt on his account. He had
no conversation and no communication with Phillips after he
was appointed treasurer. The money at the time of his
appointment was sent to him by the treasurer.
In conversation at different times with him as
treasurer of the company, and no account Phillips had been
paid that amount. The liability of the company at the
time he was appointed treasurer, amounted to about \$25,000.00.
Within no-called interest-bearing time had amounted to

about \$3,000.00 or \$4,000.00. A check for \$167.11, dated August 16, 1923, payable to Phillips, Mack & O'Bryan, and signed U.S.A. as receiver, was given because the receiver desired to purchase more felt wheels from the plaintiff, and the plaintiff said they would not ship any wheels C.O.D. until there was a settlement of accounts, and in order to get the wheels, he, the defendant, got an order for settling the account. He denied having any knowledge that he had been sued personally in any suits brought by the plaintiff. He was president of the Bennett-O'Connell Company, but not the general manager. He devoted only a small part of his time to the business of that company. The other business he had was the Ayer-O'Connell Company. That when the receivership was brought about, those two companies were joined in one suit.

The question arises, as we have said, whether the plaintiff complied with the law as to presentment or notice, or if not, whether the evidence shows a waiver of those requirements. The note was payable at Winchester, Mass., and so, as to presentment for payment, notice of dishonor, and waiver, the law of that state applies.

In George v. Haas, 311 Ill. 388, the court said:

"Parties are presumed to contract with reference to the law of the State where their contract is to be performed, and to be governed by such law rather than the law of the State where the contract was entered into. This rule has been declared and applied in practically every variety of contract, including bills of exchange, promissory notes, and checks drawn in another State payable in this."

When \$2,000.00 or \$4,000.00, a check for \$107.14 dated
August 12, 1907, payable to William A. Brown, and
signed E. J. Brown, was given to the receiver
directed to deposit with this office for the district,
and the district said that it was not until the 10th of
April there was a receipt of a check, and in 1907 he
had the check, he, the receiver, got an order for writing
the money. He found that the knowledge that he had
been paid previously in any case directed by the district,
he was principal of the Brown-O'Connell company, but not
the principal company. He showed only a small part of his
list of the business of this company. The other business
he had was the Brown-O'Connell company. That was the
company which was principal agent, under the company's name
joined in the suit.

The question arises, as he has said, whether
the plaintiff occupied with the law as to protection of
money, up to it, whether the witness knows a value of
such consideration. He says he knows of witnesses,
and he says he is not interested in the suit, but of
discovery, and money, and law of the state making.

In answer to the question, the witness said:

"I believe the witness is a resident of this
country in the law of the state where this
company is an incorporated, and as the witness
he also has taken the law of the state
where the company was formed. The witness
has been admitted and is a resident in practically
every county of the state, including this as
O'Connell, Brown-O'Connell, and other firms
in which these parties are interested."

Section 106, Chap. 107 of the General Laws of Massachusetts, 1921, provides as follows:

"The instrument is dishonored by non-payment when * * * presentment is excused and the instrument is overdue and unpaid."

Section 132 provides:

"Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give notice, and the waiver may be express or implied."

Section 138 provides:

"Notice of dishonor is not required to be given to an endorser * * * where the endorser is the person to whom the instrument is presented for payment."

That law is practically identical with the law of this State. Chap. 98 Negotiable Instruments. Such being the law, is the contention of the defendant sound?

In view of what the evidence shows concerning the protracted business relations between the parties; the giving of the trade acceptances, the transmutation of them into a series of notes, and the giving of a check; the arrangement made through the defendant, that these notes, for the convenience of the company of which the defendant was president, should come due serially, months apart; that none of these, save one, was paid, but after repeated requests by the plaintiff, or one of its attorneys, that the company went into the hands of the defendant, its

president, as a receiver before it, the note in question, was due; that at the time it went into his hands as receiver, he knew the note was unpaid; that the defendant as receiver, on or about March 31, 1923, before the note was due, sent word to the plaintiff to make proof and file its claim against the company with him; that he then called up the defendant and told him he intended to look to him personally; that on December 12, 1923, he received from the defendant as Receiver a notice signed by the latter informing him that all those having claims against the Company must present them duly verified to him, the Receiver, on or before December 31, 1923, or otherwise they would be barred from participation in the assets of the company; that the plaintiff, through its attorney, prepared a claim and mailed it to the defendant; that on March 8, 1924, which was Saturday, the attorney for the plaintiff sent a letter to the company at its address in Chicago, notifying it that the note in question would become due and payable at the attorney's office on March 9, and requesting that it be taken care of without fail; that on Monday, March 10, he telephoned to the defendant and asked him if he had received the letter, and whether or not he was sending a check, and the defendant answered that he had not received the letter; that he then told the defendant that the note, the one here in question, became due the day before, on Sunday, and that a check would have to be given for it immediately; that the defendant said that the concern was in bankruptcy, or in a receivership, and was being worked out; that he asked him "again to hold

President, as a representative before it, was not in question.
The day that it was held is well known to him as
investor, he knew the date was wrong; that the date
was not received, as on September 11, 1911, before the
move was made, and was in the vicinity of the
and the time when the company was in; that
he then called up the date and told him he intended
to look up the date; that on September 11, 1911, he
received from the date and received a letter signed by
the latter informing him that all those having a claim
against the company must present their claim verified by
him, the date, on or before September 11, 1911, or
otherwise they would be barred from participation in the
profits of the company; that the date, through the
attorney, proposed a claim and called it in the name-
date; that on June 1, 1911, when was returned, the
attorney for the date and a letter to the company
was sent to Chicago, notifying it that the date in
question would become due and payable to the attorney's
office on June 1, and requesting that it be taken care of
without fail; that on Monday, June 11, he telephoned to the
attorney and asked him if he had received the letter, and
asked if he had sent a check, and the attorney
replied that he had not received the letter; that he then
told the attorney that the date, the date in question,
became due the day before, on Monday, and that a check would
have to be given for it immediately; that the attorney said
that the company was in bankruptcy, and in a receivership,
and was being worked out; that he asked him "what he held

off and give him a chance so that the company could make payment, instead of going after him personally;" that the plaintiff's attorney told the defendant that the plaintiff had written to the latter, (the plaintiff's attorney) half a dozen times and "he knew where he stood on that, that the Eastern Felt Company would not stand for it; that they would not in the first place have taken the notes of the company unendorsed, and that they took them only with the endorsement;" that the defendant in response said he would take the matter up with his attorney; that on the following day, the plaintiff's attorney received a letter from the defendant, signed by him as Receiver, acknowledging the receipt of the plaintiff's attorney's letter of the 5th inst., and advising the latter that he was forwarding it to his attorney and requesting plaintiff's attorney to communicate with the defendant's attorney relative thereto, we are of the opinion that the position of the defendant is not tenable.

It is true that the defendant denied many of the things testified to by Phillips, but in view of the judgment of the trial judge and the propositions of law held by him, we assume he considered the testimony of Phillips as worthy of belief; and we find nothing in the record which justifies any other conclusion.

The defendant was the president and receiver, and as an officer of the court had the custody of all the property of the company, and he alone had the right and authority under the court's orders to make payments out of the company's assets, and, further, at the time the note

and give him a chance to say the things which were
 necessary in order to show his responsibility; that
 the committee's statement said the witness was not
 likely to be taken in the future, (the committee's
 attorney) said a good thing and he knew what he said
 on that, that the witness felt himself not bound
 for it; that they were not in the time when they
 the hope of the country depended, and that they had
 been only with the government; that the statement in
 testimony said he would have the matter as it was
 was; that on the following day, the committee's attorney
 appeared - before the witness, asked of him as he
 asked, accompanying the witness to one Elizabeth's sister-
 day's sister of the Bell family, and showing the letter that
 he was forwarding it to his attorney and requesting him-
 self's attorney to communicate with the witness's attorney
 and relative thereto, and as of the witness that the possi-
 tion of the statement is not feasible.

It is true that the statement dated back of the
 whole matter as of course, but as to the witness
 of the Bell family and was composed as to the said of him,
 no person he mentioned, but testimony of testimony as to
 it itself and as that nothing in the record which justified
 any other conclusion.

The statement was the president and secretary,
 and as an officer of the court the witness of all the
 property of the witness, and he said that the witness was
 not only under the witness's name as was necessary but
 of the witness's name, and, therefore, as the first the date

matured, and he had been informed of that fact, he requested the plaintiff's attorney to hold off and give him, personally, a chance; and that accommodation was given him. His office and position as to the company after the receivership was not limited, as was that of the treasurer in the case of Maynard Trust Co. v. Furbush, 243 Mass. 190. In that case the evidence showed that the treasurer was not active in the management of the corporation. In the instant case, not only was the defendant, in reality, the active manager, but as receiver he knew of the obligation, and that it was due, and, further, and more important, that it could not be paid but by him.

Our attention is directed to Phipps v. Harding, 70 Fed. 477. In that case the court said, "that insolvency is no excuse for failure to give notice of dishonor." Here the evidence shows that the plaintiff's claim is not based upon the theory that the mere fact that the company was in the hands of a receiver, dispensed with presentment and notice. The company may or may not have been insolvent; that is unimportant. In our view of the evidence, which we have set forth above, there was what might be called the equivalent of presentment and notice, and certainly, at least, that which was tantamount to an overt intentional waiver. Tucker Mfg. Co. v. Fairbanks, et al, 98 Mass. 101; Corner v. Pratt, 138 Mass. 446.

Finding no error in the record, the judgment will be affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

entured, and he had been favored of your staff, he requested the plaintiff's attorney to hold off and give him, personally, a chance; and that conversation was given him. His office and position as to the company after the transaction was not limited, as was that of the president in the case of Alford v. T. V. T. Co. His case, 190. In that case the evidence showed that the treasurer was not active in the management of the corporation. In the instant case, not only was the defendant, in reality, the active manager, but he received no part of the obligation, and that it was due, and, further, and most important, that it could not be paid out by him.

Our attention is directed to Alford v. T. V. T. Co. 190. 477. In that case the court said, "that liability as no excuse for failure to receive of defendant." But the evidence shows that the plaintiff's claim is not based upon the theory that the money loaned that the company was in the hands of a receiver, disposed of the proceeds and sold. The company may or may not have been insolvent; that is unimportant. In the view of the evidence, which we have not been given, there was what might be called the defendant of defendant and plaintiff, and certainly, as far as which was defendant to an overt intention; Alford v. T. V. T. Co. 190. 477. 191; Alford v. T. V. T. Co. 190. 477.

Nothing so clear in the record, the judgment will

be affirmed.

ATTORNEY.

THOMAS, J. & CO. ATTORNEYS, 11 WALL ST.

30 - 30863

THE PEOPLE OF THE STATE OF ILLINOIS,

Defendant in Error,

v.

GEORGE FAABORG,

Plaintiff in Error.

ERROR TO

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 670

Opinion filed Feb. 3, 1926.

MR. JUSTICE TAYLOR delivered the opinion of the court.

On January 12, 1925, an information, upon leave being obtained, was filed in the Municipal Court by Charles H. Bell, charging that the defendant, George Faaborg, on January 11, 1925, and on other days - being at that time a married man having a lawful wife then living - and Bernice Record, a single woman, unlawfully and wrongfully did live together in an open state of adultery and fornication, in violation of Section 11, Paragraph 23 of Chapter 38, Cahill's Revised Statutes of 1921. On the same day, the defendant appeared in person and waived a jury trial. His bond was fixed at \$1,000.00, and the cause set for trial on January 21, 1925. The defendant pleaded not guilty, and on the date set, there was a trial before the court without a jury. On January 23, 1925, the court found the defendant guilty, as charged, and sentenced him to confinement in the House of Correction for the term of fifteen days. This writ of error is prosecuted to reverse that judgment.

It is contended for the defendant (1) that the evidence did not show that the alleged crime occurred in the City of Chicago, County of Cook, and State of Illinois; (2) that the evidence failed to prove the crime of adultery; (3) that the evidence failed to prove that the defendant was a married man; and (4) that the trial judge erred in permitting Charlotte Faaborg, wife of George Faaborg, to testify.

The evidence consists of the testimony of Lydia R. McIlvey, who managed a 67 apartment hotel, or rooming house, at 6351 Woodlawn Avenue, Chicago; Ball and O'Connor, two police officers who arrested the defendant; Weaver, father of the defendant's wife; Charlotte Faaborg, the defendant's wife, and Bernice Record, with whom it is claimed that the defendant lived in a state of adultery.

Weaver testified that his daughter Lottie and the defendant were married about eight years ago, at Cedar Rapids, Iowa, and that he was present and saw the marriage ceremony performed at his home by a preacher; that he saw the marriage license, and he saw the minister make out the certificate. The evidence of Charlotte Faaborg is that she and the defendant were married in August, 1916, in Cedar Rapids, Iowa, at her parents' home; that she knew Bernice Record for about two and a half years at Cedar Rapids, Iowa, and saw her frequently; that she saw her in company with her, the witness's husband a number of times; saw her in the drug store which was kept

It is requested that the following information be furnished:

- (1) That the evidence did not show that the alleged crime occurred in the City of Chicago, County of Cook, and State of Illinois;
- (2) That the evidence failed to prove the crime of adultery;
- (3) That the evidence failed to prove that the defendant was a married man; and
- (4) That the trial judge erred in admitting certain testimony, all of which.

Respectfully,
[Signature]

by her, the witness's husband; saw them go into the back room of the store before and after working hours; that she saw them together in Chicago, in the store where her husband worked; that she saw her at 4501 Malden avenue, in Chicago and that on that occasion she talked with Bernice Record, and the latter told her that she had a lot of correspondence with the defendant, and showed her, the witness, the letters; that Bernice Record said she, the witness, could have all the letters if she wanted them, and handed them to her. The evidence of the witness Lydia R. Mollvey, who managed the rooming house or hotel, is to the following effect; that on Sunday, January 4, 1925, the defendant and Bernice Record came to the hotel and asked for a room; that she showed them some rooms, and they finally selected Room 21, on the second floor in the rear; that the woman said that the defendant was working nights and he had to have a quiet room in the day; that the room was selected by both of them; that the defendant paid her \$5.00; that the rent of the room was about \$8.00 a week; that they did not stay there on that Sunday; that the woman came back on Wednesday and paid \$3.00, the balance of the rent, and she, the witness, gave her a receipt, presuming at the time that she and the defendant were husband and wife; that she did not see the defendant again until Friday morning, when he and the woman, between 9:30 and 10 o'clock, went out of the hotel together, and after that she did not see him again until about two o'clock A.M. on January 12, when they were both arrested; that she did not see the woman after she paid

[illegible]

\$3.00 on Wednesday night, until the next Friday morning.

The evidence of Hall, sergeant of police, is to following effect: - that about 10:30 of the evening of January 11, 1935, he was given a warrant, based on a complaint made by Mrs. Faaborg, and later that night, about 12:35 A.M., after waiting across the street from 6351 Woodlawn Avenue for sometime, he saw the defendant and Bernice Record enter the hotel; that after waiting until 1:40 Monday morning, he went over to the building, and after making inquiries of Mrs. McIlvey, went up to the defendant's room on the second floor; that he, together with the other officer, O'Connor, went up to the room in question, rapped on the door, and when it was opened, he went in with the officer, O'Connor, and Mrs. Faaborg; that when he went into the room, the defendant was in his pajamas and Bernice Record was in bed; that he told them to get their clothes on, and that he had a warrant for them and that he was going to take them to the Woodlawn Police Station; that they dressed and were taken over to the station; that he asked them if they were married, and they said, no; that he asked the defendant if the woman was his wife, and he said, no; that at the time, Bernice Record was there, and she did not say anything different; that she said "she and Mrs. Faaborg had enough by this time, and she ought to quit;" that he asked the defendant, "why he hadn't got a divorce, and he said his wife would not give it to him;" that he had a conversation with Bernice Record; that he asked her if it was not unladylike to take another woman's husband away from her

12.00 on Wednesday night, until the next Friday morning.
The witnesses of Bill, according to the report, is so
following: - The first 20.10 of the morning of
January 12, 1911, he was given a letter, signed by a
certain man by the name of "John", and later that night,
about 10:30 A.M., after waiting about the street from
10:30 onwards, he was called, behind the bushes
and he was asked to enter the house; that after waiting
until 11:15, he was asked, he went over to the building,
and after waiting, entered at No. 10, Bellevue, and to go
the informant's room on the second floor; that he, the
father with the other officer, "Gordon", went up to the
room in question, entered on the floor, and that it was
empty, he went in with the officer, "Gordon", and the
father; that when he went into the room, the father
was in his pajamas and he was asked to get out; that he
told him to get out and that he had a
room for them and that he was going to take them to
the mother's room; that they stayed there and were
taken over to the mother's room; that he stayed there at that time
waiting, and they waited, and he asked the father
if the woman was his wife, and he said, yes; that at the
time, he was asked to leave, and was not very happy
going off; that the father said "yes" and the father had
asked if this was, and the father said "yes"; that he asked
the father, "why he didn't get a divorce", and he said
the wife would not give it to him; that he had a conversation
with the father; that he asked him if it was not
possible to have the mother's room; that he

and live with him as man and wife, and she said, "If you love a man you will do anything for him."

The record shows that it was agreed between counsel that the testimony of O'Connor, a police officer, would be the same as that of Sergeant Ball.

The evidence of Bernice Record is to the following effect:- That she lived at 4539 Racine avenue, Chicago; that she never lived with the defendant as husband and wife; that she knew him for about two and a half years, and knew him in the State of Iowa; that she is by profession a stenographer and a dancing teacher; that on January 4, she accompanied the defendant to 6351 Woodlawn avenue, and there saw Mrs. McIlvoy, the manager of the rooming house, or hotel; that the defendant did all the talking; that she did not tell the manager that her husband wanted a quiet place to sleep, nor did she introduce herself as the wife of the defendant; that she went there on Wednesday afternoon and paid \$3.00 to the manager, and got a receipt, upon her request, made out to the defendant; that she had no further conversation with the manager; that she did not go there that night and occupy the room with the defendant; that she left the premises about eleven o'clock on Friday morning with the defendant; that on Monday morning, about 12:45 A.M. she met the defendant at the 47th street "L" station; that she had been teaching dancing at the National Dancing Academy, at 431 South Wabash Avenue; that she had a small bag with her and things that she used for evening dancing; that she stayed that night at the defendant's room, where the police arrested her; that she never lived with the defendant prior to that time, and had

and live with him as long as she, and she said, "If you
love a man you will be patient for him."

The record shows that in the period between January
and the beginning of February, a police officer would
be the one to find the person who.

The witness of the case would be the following
evidence: that she lived at 1210 North Avenue, Chicago;
that she never lived with the defendant as husband and wife;
that she does not know the man who is called "John"; and that
she is the wife of John; that she is by profession a
seamstress and a domestic worker; that in January of the
year 1911, she accompanied the defendant to the Western Union
and that she, the witness, the manager of the Western Union, at that
time the defendant did not tell her anything; that she did not tell
the manager that her husband wanted a quiet place to sleep;
that she and the defendant would be out of the defendant;
that she was there on Wednesday afternoon and paid \$5.00
to the manager, and that a receipt, from the Western Union,
was in the defendant's pocket; that she has no further conversation
with the manager; that she did not go there that night and
found the room with the defendant; that she and John the witness
found eleven o'clock on Friday morning with the defendant;
that on Friday morning, about 12:15 A.M. she and the witness
and at the same time, the witness, that she has been married
living at the Western Union Agency, at 121 North Union
Street; that she has a small boy with her and child who
she had for twenty months; that she stayed that night at
the Western Union Agency, where she had been married; that she
never lived with the defendant prior to that time, and that

never held herself out to be the wife of the defendant; that she did not tell the police officer that the defendant was her husband, nor did she or the defendant sign her name on the register of the hotel; that on the morning of January 9, she went to the hotel to meet the defendant, and did so, and walked out of the hotel with him.

(1) The evidence sufficiently shows that the alleged illegal acts were committed in Chicago, Cook County, Illinois. The information alleged it; the police sergeant testified that he lived in Chicago and was a sergeant of police of the Fifth District, and was given a warrant for a violation of the Chicago Code, which he served at 6351 Woodlawn avenue by arresting the defendant; the case was tried before a Judge of the Municipal Court of Chicago. From what the record contains, we are of the opinion that the venue was sufficiently proven. Langdon v. People, 133 Ill. 382; People v. McIntosh, 242 Ill. 603; Weinberg v. People, 308 Ill. 15.

(2) Did the evidence sufficiently show that the defendant and Bernice Record, a single woman, lived together in an open state of adultery and fornication, in violation of Section 11? We think it did. The testimony of Lydia R. McIlvoy, who managed the rooming house, or hotel, together with that of the police officers, seems to demonstrate conclusively that the crime charged was committed. On January 4, 1925, the defendant and Bernice Record went to the hotel in question and asked for a room. They were shown several rooms, and finally selected Room 21, on the second floor, in the rear. When selecting the room, Bernice Record told

11. The evidence conclusively shows that the

[illegible]

the manager that it was necessary to have a quiet room as the defendant worked nights. Apparently, the room was selected by both of them. Thereat agreed upon was \$8.00 a week. The defendant paid down \$5.00. That day, Sunday, they did not stay after selecting the room, but on the following Wednesday, Bernice Record went to the hotel and paid the manager \$3.00, the balance of the week's rent, and took a receipt therefor. The manager testified that at the time she dealt with them, they appeared to be husband and wife. The manager did not see the defendant again until Friday morning, at which time she saw both the defendant and Bernice Record leaving the hotel between 8:30 and 10 o'clock. She also saw them later, about 2 o'clock in the morning on January 12, which was the time when they were both arrested. The police officers saw the defendant and Bernice Record enter the hotel about 1:40 Monday morning, and after making inquiries of the manager, he and O'Connor, another police officer, went to the room on the second floor, where they found the defendant in his pajamas and Bernice Record in bed. They were then arrested. That evidence, in our judgment, quite overwhelmingly demonstrates that they were guilty of the crime charged.

(3) Did the evidence show that the defendant was a married man? The testimony of Weaver, the father of Mrs. Charlotte Faaborg, the alleged wife of the defendant, is that they were married about eight years prior to the trial, and that the ceremony was performed by a preacher at his, the witness's home, at Cedar Rapids, Iowa. He says that they lived together as husband and wife in Cedar Rapids

until about July 1, 1934, when they came to Chicago. He further stated that at the time they were married, he saw the marriage license and saw the minister make out the certificate. That evidence, uncontradicted, we think is sufficient to prove the marriage.

(4) It is urged that the trial judge erred in permitting Charlotte Faaborg, wife of George Faaborg, the defendant, to testify. The record shows that certain questions were put to Charlotte Faaborg, and were objected to, but without any reason given, and that later, after a colloquy between court and counsel as to the right of the wife to testify, it was, evidently, agreed that her testimony should go in subject to objection, and be ruled upon later; and that thereafter no ruling was made. There is no doubt that the evidence was improper as to the husband and was proper as to Bernice Record, but, as both cases, by agreement, were being tried together, and the trial judge said he would not consider the wife's testimony as against her husband, we are of the opinion that this contention is untenable.

Finding no error in the record, the judgment will be affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

until about July 1, 1934, when they came to Chicago. He
thereafter stayed with her at the time they were married, he
now has a new wife, and the witness says that the
relationship, that was, unconsummated, was such as
would tend to prove the marriage.

(4) It is urged that the trial judge erred in
excluding the testimony of the witness, wife of George Jacobson, the
defendant, in testimony. The reason given that certain facts
were not in Jacobson's favor, and were objected to,
and without any reason given, and that later, after a re-
cross between counsel and counsel as to the right of the
wife to testify, it was, evidently, agreed that her testi-
mony should be in subject to objection, and he ruled that
fact, and that objection as being not made. There is no
doubt that the evidence was inadmissible as to the husband and
his proper as to George Jacobson, but, in this case, by agree-
ment, was being tried together, and the trial judge said he
would not consider the wife's testimony as against her husband,
as one of the reasons that this testimony is inadmissible.

Nothing as to error in the record, the judgment will
be affirmed.

Reversed.

Reversed, 1.1. 1935, 1.1. 1935.

The People of the State of Illinois, defendant in error, v.
Bernice Record, plaintiff in error. Gen. No. 30,264.

*Prosecution for being an open
state of adultery and fornication
in violation and sentence.*

to the Municipal Court of Chicago;
Superior Court of Cook county;
Court from the Circuit Court of county;
County Court of county;
Hon. Judge, presiding. Heard

the Branch Appellate Court
this court

at the term,
on authority of Gen. No. 30,263,
versed and remanded with directions.

non filed Rehearing denied

for appellants.

for plaintiffs in error.

for appellees.

for defendants in error.

SIDING JUSTICE

240 I.A. 670

delivered the opinion of the court.

Charlotte Faaborg, charging that the defendant, Bernice Record, on January 11, 1925, and on other days - being at that time a single woman - and George Faaborg, being a married man, unlawfully and wrongfully lived together in an open state of adultery and fornication, in violation of Section 11, Paragraph 23, Chapter 38, Cahill's Revised Statutes of 1921. On the same day, the defendant appeared in person and waived a jury trial. The bond of the defendant was fixed at \$1,000.00, and the cause set for trial on January 21, 1925. The defendant pleaded not guilty. Subsequently, there was a trial, the defendant, Bernice Record, and one George Faaborg being, by agreement, tried together, and a judgment finding the defendant, Bernice Record guilty, as charged, and sentencing her to confinement in the House of Correction for the term of fifteen days.

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5633a
31 - 30264

THE PEOPLE OF THE STATE OF
ILLINOIS,

Defendant in Error,

v.

BERNICE RECORD,

Plaintiff in Error.

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

240 I.A. 670

Opinion filed Feb. 3, 1926.

MR. JUSTICE TAYLOR delivered the opinion of
the court.

On January 12, 1925, an information, upon leave being obtained, was filed in the Municipal Court by Charlotte Faaborg, charging that the defendant, Bernice Record, on January 11, 1925, and on other days - being at that time a single woman - and George Faaborg, being a married man, unlawfully and wrongfully lived together in an open state of adultery and fornication, in violation of Section 11, Paragraph 23, Chapter 38, Cahill's Revised Statutes of 1921. On the same day, the defendant appeared in person and waived a jury trial. The bond of the defendant was fixed at \$1,000.00, and the cause set for trial on January 21, 1925. The defendant pleaded not guilty. Subsequently, there was a trial, the defendant, Bernice Record, and one George Faaborg being, by agreement, tried together, and a judgment finding the defendant, Bernice Record guilty, as charged, and sentencing her to confinement in the House of Correction for the term of fifteen days.

SI - 30004

THE PEOPLE OF THE STATE OF
ILLINOIS,

Defendants in Error,

VERSUS

JOHN EDGAR HOOVER,

v.

IN CRIME.

MAINTENANCE OF SUIT.

MAINTENANCE OF SUIT.

240 I.A. 670

Opinion filed Feb. 3, 1936.

MR. JUSTICE TAYLOR delivered the opinion of

the court.

On January 12, 1935, an indictment, upon

information returned, was filed in the criminal court of

Chicago County, charging that the defendant, Edward

McGuire, on January 11, 1935, and on other days - to-wit:

as that day a male woman - and Edward McGuire, being

a married man, unlawfully and wrongfully lived together

in an open state of adultery and fornication in viola-

tion of Section 11, Chapter 37, Illinois

Statutes enacted of 1931. On the same day, the defend-

ant appeared in person and waived a jury trial. The court

of the defendant was tried at Chicago, Ill., and the cause

set for trial on January 11, 1935. The defendant pleaded

not guilty. Subsequently, there was a trial, the defend-

ant, Edward McGuire, and one George Richard being by

agreement, tried together, and a judgment finding the defend-

ant, Edward McGuire guilty, as charged, and sentencing him

to confinement in the House of Correction for the term

of fifteen days.

The record of this court shows that on April 23, 1925, on motion by Bernice Record, plaintiff in error, this cause was, on May 11, 1925, consolidated with the cause bearing General Number 30263, for hearing, - the record, abstracts and briefs filed in General Number 30263 to be taken and considered as those in cause General Number 30264. We have this day handed down an opinion in the cause of the People of the State of Illinois v. George Faaborg, General Number 30263, which is decisive of this case, and which is here adopted as showing the reasoning of the court applicable to the present case.

The judgment is, therefore, affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

The record of this court shows that on April 23, 1902, on motion by certain persons, a writ of habeas corpus was granted, on May 11, 1902, was consolidated with the cause pending General Number 10283, for hearing, - the record, a certificate was filed in General Number 10283 to be taken and considered as filed in cause General Number 10284. We have this day handed down an opinion in the name of the people of the State of Illinois v. George Taylor, General Number 10281, which is decisive of this case, and which is here adopted as showing the reasoning of the court applicable to the present case.

The judgment is, therefore, affirmed.

ATTORNEYS.

THOMAS, J. J. AND GEORGE, J. CHAMBER.

56 - 30304

TOWER FURNITURE COMPANY, Inc.,

Defendant in Error,

v.

BRIDGEPORT FURNITURE COMPANY,
JULIUS JANELIUNAS and WILLIAM
PICKTORMAN,

Plaintiff in Error.

ERROR TO

MUNICIPAL COURT
OF CHICAGO.

240 I.A. 670

Opinion filed Feb. 3, 1926.

MR. JUSTICE TAYLOR delivered the opinion of
the court.

This is an appeal by the defendants William
Picktorman, Julius Janeliunas, and the Bridgeport Furni-
ture Company, from a judgment obtained against them in
the Municipal Court of Chicago, in favor of the plain-
tiff, the Tower Furniture Company, in the sum of \$181.00.

On July 18, 1924, the plaintiff, the Tower
Furniture Company, filed a statement of claim against the
defendant, the Bridgeport Furniture Company, as follows:
"that the defendant is indebted to the plaintiff in the
sum of One Hundred Eighty One Dollars (\$181.00) for furni-
ture sold to the defendant at its special instance and
request; a detailed itemized statement of the article of
furniture for which this suit is commenced has been for-
warded to the defendant; defendant accepted the furniture
and agreed to pay the sum of One Hundred Eighty-one (\$181.00)
Dollars for the same, but although frequently requested to

do so, has neglected, failed and refused so to do, to the damage of the plaintiff in the sum of Two Hundred (\$200.00) Dollars, wherefore he brings this suit." Attached to the statement of claim was an affidavit of claim that the amount due the plaintiff from the defendant was \$181.00.

On July 18, 1924, a summons, directed to the defendant, the Bridgeport Furniture Company, was issued, and subsequently returned, showing service on the Bridgeport Furniture Company by delivering a copy thereof to W. N. Picktorman, agent of the Bridgeport Furniture Company.

On July 29, 1924, a default was entered against the defendant, the Bridgeport Furniture Company for want of appearance, and judgment entered in favor of the plaintiff in the sum of \$181.00.

On July 30, 1924, an order was entered vacating the default and judgment.

On August 6, 1924, on motion of the plaintiff, it was ordered, "that all records, papers, and proceedings in this cause be and they are hereby amended by making Julius Janeliunas and William Picktorman additional defendants."

On August 7, 1924, an order was entered which contained the following: "Now come the parties to this cause and thereupon this cause comes on in regular course for trial before the court without a jury, and the Court having heard the evidence and the arguments of counsel, and

he so, has requested, failed and returned as to the
change at the plaintiff in the sum of two hundred (\$200.00)
dollars, therefore he brings this suit, as claimed by the
statement of claim and in full of his claim and
amount and the plaintiff from the defendant and \$200.00.

On July 15, 1904, a summons, returned as the
defendant, the defendant returned summons, was issued,
and accordingly returned, showing service on the defendant
and returned company by delivering a copy thereof to
W. E. Thompson, agent of the defendant defendant company.

On July 20, 1904, a default was entered against
the defendant, the defendant returned summons for want
of appearance, and judgment entered in favor of the
plaintiff in the sum of \$200.00.

On July 20, 1904, an order was entered vacating
the default and judgment.

On August 5, 1904, an order of the plaintiff,
it was ordered, "That all records, papers, and proceedings
in this case be and they are hereby returned to said
plaintiff and the said defendant defendant
defendant."

On August 7, 1904, an order was entered which
contained the following: "That from the return in this
case all the records and papers be and they are hereby
returned to the plaintiff and the said defendant
for said return the court entered a July, and the court
returning back the records and papers of record, and

being fully advised in the premises, enters the following finding, to-wit: We, the jury, find the issues against the defendants, Julius Janellunas, William Picktorman and Bridgeport Furniture Company, and assess the plaintiff's damages at the sum of One Hundred Eighty One and No/100 Dollars (\$181.00)*. That order, also shows that motions for a new trial and in arrest of judgment were made and overruled. It, also, shows that judgment was entered on the finding, in favor of the plaintiff and against the defendant, in the sum of \$181.00 and costs.

There is before us only the common law record; no bill of exceptions having been filed.

It is contended for the defendant that the statement of claim does not sufficiently state a cause of action. As the statement of claim alleges the amount of the indebtedness to be \$181.00; that that indebtedness was for furniture sold to the defendant at its special instance and request; that the furniture was accepted by the defendant, and it agreed to pay therefor, and has, so far, failed to do so; it is our opinion that the statement of claim, especially as it is in a Fourth Class case, sufficiently informed the defendant of the nature of the plaintiff's claim.

This court in McGlunn v. Gillespie, 237 Ill. App. 400, after considering this subject generally, held that all that was required in such a case was "a statement of sufficient facts reasonably to inform the defendant of the claim against him, and that it is not necessary to state sufficient facts to make out a cause of action."

being fully advised in the premises, before the following
finding, to-wit: 1st, that the same claims
the defendant, William H. H. H., and the same claims
and defendant's invention, and answer the claim-
ant's charges as the sum of One Hundred Eighty Two and
no/100 dollars (\$118.00). That order, also shows that
said sum is a new claim and in favor of defendant's
claim and invention. 2d, also, that the defendant
was advised in the finding, in favor of the plaintiff
and against the defendant, in the sum of \$118.00 and costs.

There is hereby set aside the amount for costs;

no bill of exceptions having been filed.

It is concluded for the reasons that for the
want of claim does not sufficiently state a cause of action.
As the substance of claim alleges the amount of the invention
was to be \$118.00; that that defendant was for 1890-
time sold as the defendant in the several instances and re-
sults; that the defendant was awarded by the defendant, and
it is not to be expected, and was, as yet, failed in its
it is not expected that the defendant of claim, especially
as it is in a form of new, especially intended for
defendant of the nature of the plaintiff's claim.

This case is William H. H. H. v. H. H. H.

and, after considering this matter, the court held that all
that was required in such a case was a statement of defendant
those necessary to follow the defendant of the claim against
him, and that it is not necessary to state defendant's name
to state out a cause of action.

It is further contended that the order of the Court of August 6, 1934, "that all records, papers and proceedings in this cause be and they are hereby amended by making Julius Janeliunas and William Picktorman additional defendants herein," was ineffective and did not result in making them parties to the suit. With that, we cannot agree. The order that was entered on the next day recites, "Now comes the parties to this cause and thereupon this cause comes on in regular course for trial before the court without a jury, and the court having heard the evidence and the arguments of counsel and being fully advised in the premises * * *. From that we are bound to assume, in the absence of a bill of exceptions showing anything to the contrary, that Julius Janeliunas and William Picktorman were properly made parties defendant.

The 39th Section of the Practice Act authorizes amendments at any time before final judgment, "introducing any party necessary to be joined as plaintiff or defendant, discontinuing as to any joint plaintiff or joint defendant, changing the form of the action, and in any manner, either of form or substance, in any process, pleading, or proceeding, which may enable the plaintiff to sustain the action for the claim for which it was intended to be brought, or the defendant to make a legal defense." Houglend v. Avery Coal Company, 246 Ill. 609.

Counsel for the defendant have cited Lehrer v.

Walcoff, 93 N. Y. Supp. 540. The court in that case quoted

It is further suggested that the work of the

Committee of August 6, 1944, should be continued, reports and

proceedings in this sense be sent to the Bureau of

by sending letters to the Bureau and to the

United States Senate, from Washington and the

in order that they be sent to the Senate, the

action. The report that was received on the

the same day as the letter to the

was sent on in order that the letter be sent

about a year, and the letter being sent

the committee of members and being

presented to the Senate, the letter

should be a bill of exceptions

thereby, that the letter be sent

and properly made

The work of the Committee

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Document No. 100

January, 1945

with approval from Hood v. Hood, 85 N.Y. 581, the following language: "The mere direction that these parties be brought in immediately did not bring them in. They were not represented on the trial by attorney, nor were the defendants afforded any opportunity to answer the amended complaint."

We do not know what the showing was in the Hood case, but as in the instant case the common law record recites that the parties were present; that there was a trial, and evidence and arguments were heard, and as the record shows that all that took place after the order amending the record as to parties, we feel bound to conclude that the new defendants were both properly made and became parties, and became subject to the judgment that was entered.

Although in the original statement of claim the Bridgeport Furniture Company was the only defendant, when the order of August 6, 1934, was entered amending all therecords, papers and proceedings in the cause, and a trial followed that in which, as we have said, the common law record shows that the parties were present, it cannot now be said, bearing in mind also that this is a fourth class case, that the statement of claim was defective.

It is further contended that the judgment is erroneous, in that it does not appear to be based either on the finding of the court, or the verdict of the jury. It is true that in the order of August 7, it is recited, "We, the jury, find the issues against the defendants," although the case was tried before the court without a jury. That, we look upon as the result of inadvertence, and as mere irregularity, and, therefore, as harmless error.

the witness John Doe, D. O. B., 1911, the following
testimony: "The same afternoon that I was called to the
stand, I immediately did not believe that Mr. Doe was not responsible
and on the trial by jury, not even the testimony allowed
any opportunity to show the witness was innocent."

We do not know what the witness was in the last
part of the trial; what the witness did testify to was that
the parties were present, that there was a trial, and evidence
was presented very much, and as the record shows that all that
took place after the jury hearing the record as to parties,
we feel bound to conclude that the case before the jury was
properly made and became parties, and because subject to the
judgment that was entered.

Although in the original statement of this the
testimony presented before the jury was the only statement, when the
order of Robert G. Doe, was entered according to the testimony,
proceedings and proceedings in the case, and a trial followed that
in which, as we have said, the common law record shows that
the parties were present, it cannot now be said, because in
this case that this is a former case, that the state-
ment of John Doe was correct.

It is further contended that the judgment is
extensive, in that it does not appear to be based either
on the finding of the jury, or the verdict of the jury. It
is true that in the order of Robert G. Doe, it is stated, "I
the jury, find the facts against the defendant," although
the case was tried before the court without a jury. That, we
feel sure on the basis of the testimony, and we have previously
said, that, therefore, no judgment was

-5-

Finding no error in the record, the judgment
will be affirmed.

AFFIRMED.

THOMSON, P.J. AND O'CONNOR, J. CONCUR.

finding no error in the report, the

will be attended.

RECEIVED

THOMAS, P. L. AND GEORGE, L. BROWN.

506/a

STATE BANK OF CHICAGO,
a Corporation,
Defendant in Error,

vs.

MORACE L. BRAND, JOHN KOELLING,
RICHARD HEIDE, WILLIAM ARENS,
LEOPOLD SALTIEL, PAUL LEHNHARDT,
E. J. KRUTGEN and M. WAHLSTEDT,
Plaintiffs in Error.

ERROR TO MUNICIPAL COURT
OF CHICAGO.

240 I.A. 670

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This writ of error was sued out by John Koelling and Richard Heide to secure the reversal of a judgment entered on December 12, 1923, reviving a prior judgment entered December 7, 1915. The proceeding was by scire facias, and as personal service was not obtained upon John Koelling, one of the defendants, an attempt was made to get jurisdiction of his person by constructive service.

Plaintiffs in error argue that the proceedings were wholly insufficient to confer jurisdiction, and the plaintiff has not appeared in this court to support the judgment rendered.

Section 43 of the Practice Act, Smith-Hurd Revised Statutes 1925, chapter 110, p. 1957, provides for constructive service in proceedings to revive a judgment by scire facias. It declares in substance that where the plaintiff shall file an affidavit showing that the defendant "resides, or has gone out of the state, or is concealed within the state, so that process cannot be served upon him, and stating the place of residence of such defendant, if known, *** then, in such case, notice to the defendant may be given by publication and mail in the same manner as is provided by statute for notice in like cases in chancery."

240 I.A. 670

WAS TO BE IN CHARGE
OF CHARGE

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OF CHARGE

RE. FREDERICK J. BROWN

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THE CASE OF BROWN WAS NOT BY THE COURT

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The provisions of the Chancery act with regard to constructive service in such cases is found in section 12, Smith-Hurd Rev. Stat., chapter 22, p. 229. That section provides in substance that the clerk shall cause publication to be made in some newspaper in his county of a notice containing the names of the parties, the title of the court and the time and place of the return of the summons in the case, and that he shall also within ten days of the first publication of such notice send a copy thereof by mail, addressed to such defendant whose place of residence is stated in the affidavit. The section further provides that the certificate of the clerk that he has sent the notice in pursuance of this section shall be evidence.

The plaintiffs in error contend that both affidavit and notice were insufficient. The affidavit was, we think, defective in that it failed to state that service could not be had upon the defendant, John Koelling. The notice was also defective in that it omitted to state the time and place of the return of the writ of *scire facias*.

Other errors are alleged and argued, but it will not be necessary to consider the same, as, by reason of the defects stated, the court was wholly without jurisdiction. Strict compliance with statutory provisions is necessary to give a court jurisdiction of the parties in case of attempted constructive service. McDaniel v. Correll, 19 Ill. 226; Correll v. Greider, 245 Ill. 378; Reedy v. Camfield, 159 Ill., 254; Eddy v. Eddy, 302 Ill., 446.

For the error indicated the judgment is reversed.

REVERSED.

Johnston and McSurely, JJ., concur.

For the purpose of obtaining the following information:

V. RECORDS, AND ALL, THAT MAY BE HELD BY ANY, AND
V. CERTAIN, IN THE YEAR; 1967; 1968; 1969; 1970; 1971; 1972

The parties in each of attached consecutive matters, including

the present proceedings is necessary to give a complete picture of

the party who wholly or partly participated. The first committee was

necessarily to establish the same, as by reason of the various claims,

which were the subject of dispute, and it will not be

January 17, 1971

EDWARD M. ONARRO,
Plaintiff in Error.

vs.

EMILIO LONGHI, Trading as
Italian & Greek Products Co.,
Defendant in Error.

ERROR TO CIRCUIT COURT
OF COOK COUNTY.

240 I.A. 671

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

Plaintiff in error was the plaintiff in the trial court and brought an action on the case against the defendant, trading as the Italian & Greek Products Co., charging that having theretofore enjoyed a good name and reputation, the defendant, contriving and maliciously intending to injure him, on or about August 21, 1915, in the City of Chicago, County of Cook and State of Illinois, before one of the Judges of the Municipal court of the City of Chicago, falsely, maliciously and without reasonable and probable cause, charged the plaintiff with having feloniously embezzled and appropriated to his own use the sum of \$313 belonging to the defendant; that with like malice and without probable cause, the defendant procured the Judge to issue his warrant, and that under and by virtue of this warrant and also by warrant of extradition issued by the Governor of the State of Illinois and addressed to the Governor of the State of Michigan, caused the plaintiff to be arrested, imprisoned and kept in prison, and caused the plaintiff to be taken to the City of Chicago in the custody of an officer of law, to give bail, etc.; that following the arrest the defendant caused plaintiff to be taken before several Judges of the Municipal court of Chicago, to be examined touching the supposed offense; that finally upon the hearing it was adjudged that the

plaintiff was not guilty of the supposed offense, and plaintiff was thereupon discharged out of custody, and the prosecution is wholly ended and determined.

The defendant by his attorney, William Navigato, filed a plea of not guilty and a further plea of the statute of limitations. The praecipe in the suit was filed on November 14, 1922, and on October 7, 1924, William Navigato withdrew his appearance as attorney for the defendant. The case came on for trial before a jury, which returned a verdict for the defendant, on which the court entered judgment for costs against the plaintiff. At a later date an attempt was made by the attorney, Navigato, who had withdrawn from the case, to satisfy the same of record.

It is argued that the court erred in receiving the testimony of a witness for the defendant, who had remained in the court room while evidence was being heard, notwithstanding the order of the court excluding witnesses; that the verdict is against the weight of the evidence, and that the court erred in refusing to give the jury certain instructions requested by the plaintiff. The instructions are not preserved in the bill of exceptions, and are not therefore subject to review of this court. Greenwall v. Hess, 298 Ill., 459, and Bishop v. Dignan, 223 Ill. App. 172.

We shall not discuss the weight of the evidence, as for other obvious error the judgment must be reversed.

The evidence submitted in the case tended to show that plaintiff, Gnarro, had been employed by the defendant as a traveling salesman; that this employment had ceased and plaintiff had begun to work for another firm; that while in the employ of the defendant plaintiff made a loan of money to the defendant, taking his note therefor, which was not paid or which was paid only after it was

plaintiff was not guilty of the supposed offense, and plaintiff was not guilty of the offense, and the prosecution in each case was abandoned.

The defendant by his attorney, William H. Hays,

first a plea of not guilty and a further plea of the statute of limitations. The statute in this case was filed on November 14, 1911, and on October 7, 1911, William Hays filed his motion for a writ of habeas corpus.

The case came on for trial on November 14, 1911.

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transferred to a third party, who brought suit thereon; that afterward the defendant charged that plaintiff had collected from the customers of the defendant the amount of certain bills and had failed to remit the proceeds thus collected to the defendant. The defendant upon the trial introduced evidence tending to justify the charge against plaintiff.

On redirect examination of defendant, over the objection of plaintiff the court received in evidence a letter which the defendant testified he had received from one Carbone through the mail, in answer to a letter written by the defendant. This letter was dated August 18, 1913, and stated:

"Mr. Longhi: Have received your letter and you can be sure of what I recommend. Today I have been over to Montemarano and took us half a day to find this bill, at the end we finally found it. Best regards, Paul Carbone.

On or about next week will send some money, business slow, be patient."

Over objection of plaintiff's attorney this letter was read to the jury, and the witness then stated, in response to further questions, that he had received a bill marked paid by the plaintiff, Gnarrow, and that this was the bill he had testified about. The letter was the statement of a third party, not under oath, written in response to a letter of the defendant, which is not in evidence. It was undoubtedly error to receive the letter in evidence. Capon v. DeSteiger Glass Co., 105 Ill., 185.

For the error indicated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

transferred to a third party, and through said transfer, it is alleged that the defendant charged that plaintiff had withdrawn from the management of the defendant the amount of certain bills and had failed to remit the proceeds from plaintiff to the defendant. The defendant denies the total indebtedness alleged to exist in plaintiff and denies plaintiff's liability.

On plaintiff's examination at defendant's request, after the objection of plaintiff, the court received in evidence a letter which the defendant testified he had received from one George Brown, dated July, 1907, in which is a letter written by one defendant. This letter was dated August 12, 1907, and stated:

"Mr. Brown: I have received your letter and am glad to hear of what I remember. Today I have been over to defendant and told him that I had a bill in hand for him, and he has finally paid it. Best regards, Fred Brown."

It is about that time that some money, business money, was received."

After admission of plaintiff's attorney that this letter was sent to the jury, and the witness was asked, in response to further questions, that he had received a bill dated July 1907, plaintiff, Brown, and that this was the bill he had received about. The letter was the statement of a third party, and that such witness is competent to testify to the defendant, when it was in evidence. It was accordingly stated to receive the letter in evidence. Exhibit A - Plaintiff's Exhibit No. 1, 100 111, 100.

For the above reasons the defendant is granted and the motion sustained.

Witness and defendant, 11, 100, 100.

5863a

IDAHO EVAPORATING COMPANY,
a corporation,
Appellee,

v.

A. H. WELCH and H. C. WELCH,
doing business as Welch & Welch,
a copartnership,
Appellants.

APPEAL FROM
MUNICIPAL COURT
OF CHICAGO.

240 I.A. 671

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

On trial by the court, there was a finding and judgment for the plaintiff in the sum of \$2,275.58.

Plaintiff is a corporation of Idaho and the defendants a copartnership, doing business in Chicago as general commission merchants. The claim of the plaintiff was for the proceeds of certain cars of prunes shipped by plaintiff to defendants. The affidavit of merits alleged that the transaction with reference to these prunes was with one Vanderberg and not with the plaintiff, and further that at the request of Vanderberg, defendants remitted the proceeds of the sales to plaintiff, and that plaintiff accepted the remittance in settlement of the account.

Objections of the defendants to certain evidence offered by the plaintiff in order to show the condition and quality of the prunes at the time the shipments arrived in Chicago were offered and were sustained by the court, nevertheless the first contention of the defendants here is that evidence of these conditions was necessary in order to make a prima facie case for the plaintiff, and that as there is no such evidence in the record the judgment should be reversed.

An examination of the statement of claim and affidavit of merits, however, discloses that no issue was raised on the

UNITED STATES

DISTRICT COURT

OF CHICAGO

240 I.A. 671

Plaintiff

v.

A. J. WILSON and H. W. WILSON,
Defendants.

Verdict

THE COURT

DOES HEREBY

ON THIS 10th day of May, 1906, after a full and complete

trial, the jury has returned the following verdict:

That the plaintiff is entitled to recover the sum of \$10,000.00.

The plaintiff is a corporation organized under the laws of the State of Illinois.

The defendant is a corporation organized under the laws of the State of Illinois.

The plaintiff claims that the defendant is liable to it for the sum of \$10,000.00.

The defendant claims that the plaintiff is liable to it for the sum of \$10,000.00.

The court finds that the plaintiff is entitled to recover the sum of \$10,000.00.

The court finds that the defendant is liable to the plaintiff for the sum of \$10,000.00.

The court finds that the plaintiff is entitled to recover the sum of \$10,000.00.

The court finds that the defendant is liable to the plaintiff for the sum of \$10,000.00.

The court finds that the plaintiff is entitled to recover the sum of \$10,000.00.

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The court finds that the plaintiff is entitled to recover the sum of \$10,000.00.

The court finds that the defendant is liable to the plaintiff for the sum of \$10,000.00.

The court finds that the plaintiff is entitled to recover the sum of \$10,000.00.

pleadings as to the condition of the prunes, and it was therefore, we think, unnecessary for the plaintiff to offer evidence to that point. An issue in that regard did arise on the pleadings in L. J. Upton & Co., Inc. v. Reeve, 123 Va. 241, on which defendants rely. Again it is argued that the transactions in question were with one Venderberg, who acted independently and on his own account, and not as the agent of the defendants. This point is stated in the argument of defendants but not in the points made in their brief. The evidence bearing upon that point is not pointed out or discussed in the argument. Even a casual examination of the evidence, however, indicates that the court was justified in finding that Venderberg acted as the authorized agent of defendants in the transaction.

After the sale of the last shipment of prunes about November 21, 1922, defendants sent to the plaintiff a memorandum showing several shipments and the balance due to plaintiff of \$226.53 and also enclosed a check for that amount. There is no dispute as to the correctness of this statement. Plaintiff's claim arises out of the fact, which seems to be conceded, that Venderberg as to several of the shipments received the same upon the guaranty that the same would sell at a given price. It is undisputed, as we understand it, that certain of the shipments did not sell for a price sufficient to meet the guaranty, and defendants contend that they had the right to deduct the amount of their loss on the shipments guaranteed from the proceeds of sales of shipments which were not guaranteed.

When the check was first received, plaintiff took the matter up with the agent, Mr. Venderberg, and later, as he was absent from that territory, plaintiff on June 9, 1923, wrote to defendant explaining its position in the matter, and stating that because of the difference between them plaintiff was still holding the check. Upon the trial, the check was turned over to the defendant, the court stating to the parties that unless it was turned over, he would reduce the judgment by the amount of the check.

...to the condition of the person, and it was therefore
...unnecessarily for the plaintiff to offer evidence to that
...in fact, as shown in that regard by the evidence in
...U.S. v. ..., 125 F. 2d, on which testimony
...is given. Again it is argued that the statements in question were
...with the defendant, who acted independently and on his own account,
...and not as the agent of the defendant. This point is stated in the
...of defendant but not in the points made in their brief.
The evidence bearing upon that point is not pointed out or discussed
in the argument. Even a casual examination of the evidence, how-
ever, indicates that the matter was handled in a manner that would
be regarded as the customary practice in the business.
After the sale of the last shipment of furs about
November 21, 1932, defendant went to the plaintiff's warehouse
...and also obtained a check for that amount. There is no dispute as to
the correctness of this statement. It is the plaintiff's claim that at
the time, which seems to be correct, that defendant was in control
of the shipment received from him the property that the goods
would still be a stolen good. It is undisputed, as we have said,
that certain of the shipments did not bear a price sufficient to
meet the property, and defendant contends that they had the right to
deduct the amount of their loss on the shipments purchased from the
...which was not intended.
Now the check was first received, plaintiff took the
money up with the bank, Mr. Vandenberg, and later, as he was
...plaintiff on June 7, 1933, when he
defendant explaining the position in the matter, and stating that
because of the difference between their plaintiff was still holding
the check. Upon the trial, the check was turned over to the
defendant, the court ruling in the plaintiff's favor as to
turned over, he would receive the payment for the amount of the check.

The defendants contend on authority of Day-Luellwitz Lumber Co. v. Wallace L. Serrell, 177 Ill. App. page 30, that the retention of this check was for an unreasonable length of time, and as a matter of law constituted an accord and satisfaction.

There was nothing in the check, nor in the memorandum which accompanied it, that would indicate to the plaintiff that if the check was retained it would be in satisfaction of plaintiff's claim, or that the acceptance of the check by plaintiff would be upon that condition.

The dispute, as a matter of fact, had not yet arisen, and there was evidence from which the court could find that when it did arise the matter was promptly taken up with the agent of defendants, and afterwards in his absence, the plaintiff wrote fully to defendants explaining their position in regard to the matter.

As plaintiff points out, the memorandum, which was introduced in evidence and which accompanied the check, does not even purport to be a sales account. No letter was enclosed nor any other statement made by defendants, which could have put the plaintiff upon notice that the acceptance of the check would be considered as a settlement of a disputed account. The retention of the check without cashing it, under such circumstances, did not amount to an accord and satisfaction. South Side Coal Co. v. Gross, 157 Ill. App. 218. See also Steidtman v. Jos. Lay, 234 Ill. 84; Western Union R. R. Co. v. Franklin Smith, 75 Ill. 496; Rockford, Rock Island & St. Louis R. R. Co. v. Rose, 72 Ill. 183; Canton Union Co. v. Farlin & Granderff Co., 117 Ill. App. 622. The judgment is affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

The defendant's conduct in relation to the plaintiff's
plaintiff v. defendant, 117 Ill. App. 3d 100, 354 Ill. 100, 197
 the retention of this check was for an unreasonable length of
 time, and as a matter of law constituted an abuse of
 discretion.

There was nothing in the check, nor in the circumstances
 which warranted it, that would indicate to the plaintiff that
 at the check was retained it would be in violation of plain-
 tiff's claim, or that the retention of the check by plaintiff
 would be upon that condition.

The defense, as a matter of fact, had not yet arisen,
 and there was evidence from which the jury could find that when
 it did arise the matter was promptly taken up and was not of
 consequence, and otherwise in his favor, the plaintiff's
 right to recover was explained in his position in regard to the
 matter.

As plaintiff points out, the memorandum, which was intro-
 duced in evidence and which accompanied the check, does not even
 purport to be a sales receipt. No letter was enclosed with any
 other statement made by defendant, which would have put the plain-
 tiff upon notice that the possession of the check would be con-
 sidered as a retention of a disputed account. The retention of
 the check at least created it, under such circumstances, did not
 amount to an abuse of discretion. Plaintiff v. Defendant,
 105 Ill. App. 3d 100, 354 Ill. 100, 197 Ill. App. 3d 100, 354 Ill. 100,
Plaintiff v. Defendant, 117 Ill. App. 3d 100, 354 Ill. 100, 197
Plaintiff v. Defendant, 117 Ill. App. 3d 100, 354 Ill. 100, 197
Plaintiff v. Defendant, 117 Ill. App. 3d 100, 354 Ill. 100, 197
 judgment is affirmed.

ATTORNEYS.

78 - 30330

A. S. SHAY,
Appellant,

vs.

BOL FUCHS,
Appellee.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 671

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

The plaintiff in the trial court appeals from an order entered upon the motion of defendant, striking plaintiff's amended statement of claim and dismissing his suit. It appears from the order that it was entered upon the theory that the plaintiff's amended statement did not set forth a cause of action.

The statement of claim thus adjudged insufficient consisted of two paragraphs. The first of these alleged that on or about May 5, 1922, plaintiff delivered to the defendant a certain number, to-wit, eight thousand piston rings for the purpose of having the defendant sell the same for plaintiff for cash, and subsequent thereto, to-wit, on or about June 5, 1922, the defendant entered into an agreement with the plaintiff whereby the defendant promised and agreed to pay the plaintiff the sum of \$1500 upon the sale of said piston rings by the defendant; that under and by virtue of said agreement the defendant sold the piston rings, but has refused, neglected and failed to pay the plaintiff, although often requested to do so, to his damage.

The second paragraph consists of what in common law pleading is technically designated as the common counts.

The defendant contends that the question of whether it was error to strike the claim is not properly raised upon this record because the rulings of the court are not preserved by a bill

THE UNITED STATES OF AMERICA
OF TEXAS

2401 A. 671

IN WITNESS WHEREOF
I have hereunto set my hand and the seal of the Court
this 10th day of June, 1900.

The plaintiff in the above entitled case at first
admitted that the action of defendant, which plaintiff's counsel
admitted to claim as defendant's, was not. It appears from the
evidence that it was stated upon the stand that the defendant
admitted plaintiff did not wish a copy of said.

The defendant of claim that plaintiff's
evidence of the defendant. The time of such claim was in
the month of May, 1900, plaintiff delivered to the defendant a certain
number, to-wit, three hundred and thirty three and no part of
said the defendant said the copy of plaintiff for said, and said

plaintiff, to-wit, on or about June 1, 1900, the defendant
admitted that an agreement with the plaintiff whereby the defendant
plaintiff was to be paid the amount of one of \$1000 was the
same as said claim made by the defendant; that under and by the
said of said agreement the defendant said the plaintiff, and that
plaintiff, plaintiff said that the plaintiff, although often
repeated to be in his hands.

The second paragraph covers all that is shown in
plaintiff's testimony as the same would.
The defendant denies that the question of whether it
was true to state the claim is not plaintiff's claim was not
shown because the plaintiff at the time was not represented by a bill

of exceptions. It appears, however, from the order entered that the motion to strike was in the nature of a demurrer; and a bill of exceptions is not necessary in such case to preserve the question for review in this court. Harmon v. Callahan, 286 Ill., 59; Cohen et al. v. Flaxman et al., 232 Ill. App. 240; H. & E. Holding Company, Inc. v. W. A. Davis Lumber Co., 229 Ill. App. 409.

The defendant argues that paragraph One of the statement of claim is wholly insufficient, that the statement shows plaintiff's theory to be that defendant was liable as a factor and that the facts alleged are not sufficient to establish a legal liability upon that theory. The paragraph does not, however, aver that the relationship between plaintiff and defendant, out of which the alleged liability arose, was that of a factor. Indeed, in the opinion of a majority of this court, the paragraph is so vague and general in its averments that, construing it most strongly against the pleader (as we understand the rule requires upon a motion to strike for insufficiency) it is very doubtful whether it can be held to state any cause of action upon any theory whatsoever.

The motion, however, went to the whole statement, including the second paragraph consisting of the common counts. The defendant asserts that the common counts are insufficient under the rules of the Municipal court, but cites no authority so holding. Rule 15 of the Municipal Court provides:

"Every pleading shall contain a concise statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, but not the evidence by which they are to be proved. All allegations shall be as brief as the nature of the case will permit. Every pleading shall be divided into paragraphs so numbered as to be readily identifiable. Failure to so number or correctly number such allegations shall give no occasion for any dilatory motion, but the court will order the pleader to number the same instant in proper cases."

Rule 20 provides:

"No demurrer shall be allowed, but the court may, on motion, order any pleading to be stricken out on the ground that it is insufficient in law or does not comply with the rule of this

of exceptions. It appears, however, from the order entered that the motion is still in the nature of a demurrer; and a bill of exceptions is not necessary in such case to preserve the question for review in this court. Horton v. California, 111 U.S. 50; United States v. E. A. Dwyer, 111 U.S. 409.

The defendant argues that paragraph one of the statement of claim is legally insufficient, that the statement shows plaintiff's theory to be that defendant was liable as a factor and that the facts alleged are not sufficient to establish a legal liability upon that theory. The statement does not, however, aver that the relationship between plaintiff and defendant, and on which the alleged liability rests, was that of a factor. Indeed, in the opinion of a majority of this court, the paragraph is so vague and general in its averments that, notwithstanding it most strongly suggests the plaintiff's understanding of the rule requires upon a motion to strike the liability, it is very doubtful whether it can be said to state any cause of action upon any theory whatsoever.

The motion, however, went to the whole statement, including the second paragraph consisting of the common counts. The defendant asserts that the common counts are insufficient under the rules of the English court, but cites no authority in support.

Rule 15 of the English court provides:

"Every pleading shall contain a concise statement of the matters in dispute on which the party pleading relies for his claim or defense, as the case may be, but not the evidence by which they are to be proved. All allegations shall be stated in the nature of the case will permit. Every pleading shall be verified by the party or his counsel as to the truth of the facts therein stated. This rule shall not apply to a counterclaim or cross-claim, but the court will order the pleader to verify the same in proper cases."

Rule 30 provides:

"No demurrer shall be allowed, but the court may, on motion, order any pleading to be amended or on the ground that it is insufficient to lay it out and supply with the rule of this

court, or the court may order a more specific or amended pleading to be filed."

The common counts may not be specific, and in such case the court would no doubt have the power to require a more specific pleading in the nature of a bill of particulars; but we believe it has never been held by any court of review in this state that the common counts are an insufficient statement of a cause of action as a matter of law. The court, we think, erred in so ruling, and for this error the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

...of the court and order a writ of habeas corpus in the same manner as in the case of a writ of habeas corpus.

The common law rule has been modified, and in such cases the court will not grant a writ of habeas corpus.

...in the case of a writ of habeas corpus, the court will not grant a writ of habeas corpus if it has been held by any court of record in this state that the common law rule is an inflexible principle of a course of action as a matter of law. The court, we think, acted in so ruling and for this error the judgment is reversed and the cause remanded.

REVEREND AND HONORABLE

Johnston and Johnson, J.L., counsel.

A. D. DOBERSTEIN and
BRONISŁOWA SZOSZOWSKI,
Appellants,

v.

UNION BANK OF CHICAGO,
a corporation,
Appellee.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

240 I A. 671

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

The plaintiffs, appellants here, recovered a judgment against defendant in the sum of \$228.16, entered upon the finding of the court.

They contended below and urge here that they were entitled to recover the further sum of \$1062.50, with interest, and to that end, prosecute this appeal.

The controversy grows out of an agreement in writing made on March 5, 1924, between the defendant bank, as trustee, party of the first part, and Stephania C. Douvan and Bronisłowa Szoszowski, as parties of the second part, whereby the bank agreed to convey by a trust deed certain premises described in the contract for the total consideration of \$4250.

The contract stated that \$1062.50 was paid upon the execution thereof, "the receipt of which is hereby acknowledged." It further provided for the payment of the balance in monthly payments with interest at the rate of six per cent per annum, the first payment to be made on April 5, 1924, the entire balance with interest to become due at the end of fifty-seven months.

The interest of Stephania C. Douvan under this contract was purchased by the plaintiff, Deberstein, after the execution and delivery of the contract, and under circumstances from which the court was justified in finding that he had full knowledge.

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They contained below and give here that they were
wished to recover the further sum of \$1000.00, also interest,
and be paid to the same.

The controversy grew out of an agreement in writing made on March 2, 1904, between the defendant bank, on the one hand, and the first, second and third National Bank, on the other hand, whereby the bank agreed to convey by a trust deed certain property described in

The exhibit stated that 1100.30 was paid when the
 American Express, and receipt of which is hereby acknowledged
 It further stated that the amount of the balance is monthly
 payments with interest at the rate of six per cent per annum, to
 first payment to be made on April 1, 1934, the entire balance to
 be paid by January 1, 1935, and of \$100.00 per month.

The answer of Economic & Power Group was that it was prepared by the Plaintiff, Independent, after the conclusion and delivery of the contract, and under circumstances, that which the court was qualified to find as fact.

A preponderance of the evidence tends to show that Eugene W. Douvan was a member of the firm of Douvan and Feigen; that prior to the execution of the contract on about March 4, 1924, the plaintiff, Szoszwski, paid to Eugene Douvan the sum of \$550. She did not at that time have, nor had she theretofore, had any talk with the defendant bank or with any of its officers about the matter, and the payment in question was made to Douvan, either at her house or in his office.

The evidence further tends to show that this contract was first signed by the parties of the second part and was presented to the assistant trust officer of the defendant bank for his signature; that the trust officer signed the contract in behalf of the bank, thinking at the time that the bank had or would receive the \$1062.50 called for by the contract. As a matter of fact, however, Douvan and Feigen received this money and did not return the same over to the defendant bank. Therefore, although the contract stated that this sum of \$1062.50 had been received by the bank, that was not in fact true.

The plaintiffs argue that Douvan and Feigen were agents of the bank in this transaction, but this contention is disproved by an overwhelming preponderance of the evidence.

After the execution of the contract, Mrs. Szoszwski continued to make monthly payments which the defendant bank received and continued so to do until it received information that the title to the property was in such shape that it would be unable to make conveyance of a good and sufficient title. Thereupon it refused to receive further payments and offered to return those payments which had been in fact made to it. Roherstein purchased the Douvan interest in the contract with (as the court was justified in finding) full knowledge of all the facts.

The plaintiffs do not contend that evidence was not admissible in order to show that the amount named in the receipt

set forth in the contract was not actually received by defendant, but do contend that the defendant was estopped by reason of the recital in the contract from setting up that it did not, in fact, receive the amount of cash named in the contract.

The facts, however, are in our opinion wholly insufficient to base an estoppel thereon. It does not appear that the plaintiffs relied upon the statement in the contract nor that the bank made any statement with reference thereto with intention to deceive nor that evidence as to the actual amount received would result in any fraud upon the plaintiffs.

The suit, moreover, is not brought upon the contract, but rather based upon the theory that the contract has been rescinded, and the defendants acquiesce in this view. Under these circumstances the plaintiffs were entitled to recover the actual money which the bank had received, and for this amount, they have recovered judgment. They were not entitled to recover more.

What rights, if any, they have as against Douvan and Feigen, to whom the money was actually paid, cannot be determined in this suit for the obvious reason that Douvan and Feigen are not parties. Milligan v. Miller, 253 Ill. 511; Tillotson v. Mitchell, 111 Ill. 518; Employers Liability Assurance Corp. v. Kelly Atkinson Construction Co., 195 Ill. App. 620.

The judgment is affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

...in the contract was not actually received by defendant,
but he contends that the defendant was assigned by reason of the
written in the contract from setting up that it is not, in fact,
receive the amount of cash named in the contract.

The facts, however, are in my opinion really inconsistent
to have an assigned person. It does not appear that the plaintiff
relied upon the assignment in the contract nor that the bank made any
statement with reference thereto with intention to deceive nor that
evidence as to the actual receipt would result in any fraud
upon the plaintiff.

The rule, moreover, is not brought upon the contract, but
rather based upon the theory that the contract has been transferred,
and the defendant's acceptance in this view. Under these circumstances
the plaintiff was entitled to recover the actual money which the
bank had received, and for this reason, they have presented argument.
They were not entitled to recover more.

That right, it may, they have no claim against and
therefore, in such the money was actually paid, cannot be determined
in this case for the reasons stated that neither can it be
determined. William V. Miller, Dec. 11, 1911; Williams v. Williams,
111 Ill. 610; Williams v. Williams, 109 Ill. 610.

Williams v. Williams, 109 Ill. 610.
The judgment is affirmed.

FORWARDED AND RECORDED BY THE CLERK.

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5066a

CARY MANUFACTURING CO.,
Appellee,

vs.

JOHN S. McCHESNEY,
Appellant.

INTERLOCUTORY APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

240 I.A. 671

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from an order denying his motion to dissolve a preliminary injunction issued upon the filing of the bill.

The injunction in question restrained defendant and his agents during the pendency of the suit from interfering with, obstructing or stopping any of the business of the complainant or its agents, and from entering upon the premises where the employees, officers or agents of complainant were at work for the purpose of interfering with and obstructing the business of complainant, and from gaining entrance to said premises by threats, force, etc., against the agents and employees of the complainant, and from removing from the premises any part of the property or machinery of complainant, and from damaging or injuring the same, and permitting continuous trespassing upon said property, and from doing any acts in the furtherance of any conspiracy to restrain or obstruct complainant and its officers and agents in the management of its business and affairs, and from congregating along and upon the sidewalks, streets and alleys adjoining the premises occupied by complainant for the purpose of intimidating officers, agents or employees, and preventing them from rendering their services to complainant, and from molesting any person employed by complainant.

At the time of the entry of the order denying the motion

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INVESTIGATION REPORT ON THE
COUNT OF BOOK COUNTY

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COUNT OF BOOK COUNTY

240 I.A. 671

INVESTIGATION REPORT ON THE
COUNT OF BOOK COUNTY

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to dissolve, the court entered a further order that defendant might "without prejudice to the rights of either the complainant or the defendant in this proceeding, enter the premises *** at the reasonable convenience of complainant solely for the purpose of removing therefrom such property as it may be mutually agreed by complainant and defendant belongs to said John Sherman McChesney, the removal of said property to be conducted at the reasonable convenience of complainant."

The motion to dissolve was supported by the answer and certain affidavits and evidence were also submitted in behalf of the complainant. The record is voluminous, although the issue seems to have been limited by the court to the question of whether the preliminary injunction should be dissolved, the consideration of the case upon its merits being reserved.

The material facts appear to be that the complainant, Cary Manufacturing Company, ^{is} an Illinois corporation, and that it is the owner of certain improved real estate in the city of Chicago known as Nos. 1737 and 1739 North Wells street.

The corporation was organized as subsidiary of the Cary Manufacturing Co., a corporation of the State of New York, practically the entire stock of which was owned by Spencer C. Cary, who was also the owner of all the stock of the Illinois corporation with the exception of certain qualifying shares which were endorsed in blank and delivered to him.

The defendant, John S. McChesney, is an inventor of certain wire-tying machinery, for which he obtained patents which were thereafter purchased by the Cary Manufacturing Company of New York at a bankruptcy sale of his assets. Spencer C. Cary and the defendant thereupon entered into a contract by which the defendant agreed to acquire and secure for Cary the right, title and interest in and to certain inventions as specified. This was in December,

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1932, and the defendant states, "I was to deliver to the Cary Manufacturing Co. of New York a satisfactory portable wire tying machine, and they were to pay for the labor and material used, and I was to render my bill for services when completed." The defendant also sold the wire products and tools for the New York corporation on a commission basis. The work of defendant was done and his business conducted at a shop located at 442 North Wells street in the city of Chicago.

On April 16, 1933, the Cary Manufacturing Co. wrote defendant as follows:

"We have thought it well to organize a small company of our name under the laws of Illinois, and it is necessary that at least one of the organizers and directors shall be a resident of Illinois, and we, therefore, thought we would name you as one of the organizers and also a director for the first year. Please advise us if it is agreeable for us to use your name as an officer of the company, also as one of the organizers."

The Illinois company was therefore organized and purchased for its own use the property located at 1737-1739 North Wells street. On May 15, 1933, the defendant moved his shop to these premises, and he continued to occupy them until a few days prior to the filing of the bill herein. He occupied the third floor as a residence, and the first floor was used as his shop. The precise nature of the agreement by which he occupied these premises is the controlling question in this litigation. The complainant contends that defendant was simply an employe and that upon his discharge a few days prior to the beginning of the suit, his right to occupy these premises being incidental to his employment, also ceased with the termination of that relationship.

The defendant on the other hand contends that his occupancy of the premises was pursuant to a verbal agreement and amounted to a lease of the premises which could not be terminated without giving notice as required by the statute. The defendant

cites cases to the effect that a writ of injunction may not be used to terminate a tenancy of this sort, and this is undoubtedly the law, as in such case a complainant would have a full and complete remedy at law, while to put defendant out of the possession of premises by means of an injunction would result in depriving him of his constitutional right to a trial of the issue by a jury.

A further question in the case is whether under the facts, as the same appear, the court was justified in finding that the defendant had been injuring certain machinery upon the premises belonging to the complainant company. The evidence upon both these points is contradictory, and we do not think that pending a trial upon the merits we should express an opinion upon its weight further than to say that in our opinion the evidence on both issues was sufficient to justify the court in continuing the injunction in force until the issues might be tried. That is the only question now here for our determination, and after a quite careful consideration of all the evidence we think the Chancellor did not abuse his discretion in continuing the preliminary injunction in force pending a hearing.

The order is therefore affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

also cases to the effect that a writ of injunction may not be
used to terminate a tenancy of this sort, and this is undoubtedly
the law, as in such cases a tenant would have a right to some-
times tenancy of law, which is not determined out of the possession
of premises by means of an injunction would result in depriving him
of his constitutional right to a trial of the issue by a jury.

A further question in the case is whether under the
facts, as the same appear, the writ was justified in finding that
the defendant had been injured certain necessary with the premi-
ses belonging to the defendant company. The evidence with re-
spect to this is contradictory, and we do not think that
a trial upon the merits is needed, as the facts are clear in
view of the fact that in our opinion the evidence as
such leaves no question as to the guilt in causing the
information in force until the facts are tried. That is the
only question now before for our determination, and after a brief
summary of the facts of all the evidence we shall then proceed
to the question of the defendant's liability for the injury to the
premises in force pending a hearing.

The order is therefore affirmed.

ASTORIA.

Witness my hand and seal, this 11th day of January, 1911.

FRANK CIMINO,
Appellant,

vs.

IRWIN TUCKER and JOHN KOKENES,
Copartners doing business as
TUCKER & KOKENES,
Appellees.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 672

MR. PRESIDING JUSTICE MATCHETT

DELIVERED THE OPINION OF THE COURT.

This is an appeal by Frank Cimino, plaintiff, from a judgment entered against him and in favor of plaintiff for costs, upon a verdict of a jury upon the trial of two consolidated cases.

The pleadings disclose that the co-partnership of Tucker & Kokenes was sued by Cimino for the purchase price of sixty bags of garlic.

Thereafter Tucker and Kokenes sued Cimino upon claim for damages for the non-acceptance of 307 cases of California black olives, which Tucker and Kokenes had theretofore contracted to sell to Cimino, and which he had agreed to buy. The statement of claim set up that upon the refusal of Cimino to accept the olives, Tucker and Kokenes sold the same for his account, resulting in a loss to them of \$320.40.

Cimino filed an affidavit of merits, in which he denied all material facts; alleged and averred that the olives tendered were not of the kind and quality which he had agreed to buy; that he had offered to return seven cases which had been delivered, but that Tucker and Kokenes refused to receive the same, whereupon he placed the same in storage, and that the storage thus furnished was of the value of \$500. The affidavit further averred that on or about April 10, 1923, upon a consideration of their mutual claims and demands, Tucker and Kokenes were found indebted to Cimino in the sum

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of \$143.53, which sum was paid by a check for that amount.

The cases were consolidated and the issues submitted to a jury, which brought in a verdict in favor of Tucker and Kokenes, upon which the judgment was entered. The evidence submitted disclosed that there was no controversy about the garlic, and that the copartnership was indebted to Cimino on account of that transaction to the amount claimed.

The evidence further tends to disclose that a controversy arose between the parties about the olives, and that on April 10, 1923, Tucker and Kokenes sent their check to Cimino for the sum of \$143.53, the check stating thereon that it was "in full settlement of all obligations to date." This check was received by Cimino on the following day, and he retained the same and held it until after the beginning of his suit. Thereafter, on April 25, 1923, he returned the check to Tucker and Kokenes through his attorney, who at the same time wrote stating in substance that it was returned because it stated that it was in full settlement.

The controverted facts with reference to the olives, we regard as settled by the verdict of the jury, and the appellant does not argue that the verdict is against the preponderance of the evidence.

Error, however, is assigned and argued with reference to the instructions given to the jury.

As is the usual practice in the Municipal court, the court instructed the jury orally. The court told the jury that if it believed from a preponderance of the evidence that Cimino agreed to buy and Tucker and Kokenes agreed to sell and deliver 307 boxes of olives at a certain price and of a quality to be according to a sample submitted, and that Tucker and Kokenes were ready, willing and able to perform on their part, and Cimino wrongfully refused to accept deliver

of said olives, then Tucker and Kokenes were entitled to recover damages from Gimino, if any, and that the measure of damages, if any, was the full contract price of any olives actually delivered and accepted by Gimino, together with a further sum representing the difference, if any, between the contract price of olives not accepted and the amount realized by Tucker and Kokenes by the re-sale of the olives, and that those damages, if Tucker and Kokenes were entitled to them under the evidence and instructions of the court, should be credited against the sum of money Tucker and Kokenes admitted owing for the sixty bags of garlic. Further, that "If a buyer wrongfully refuses to accept merchandise under a contract of sale, the seller has the legal right to re-sell and recover the loss, if any, from the buyer. The seller is bound to act in good faith and to exercise reasonable diligence and care in making the re-sale. He may sell at public or private sale, and it is not essential for the validity of a re-sale that notice be given to the buyer."

It is argued that the measure of damages was incorrectly stated in this instruction; that the measure of damages is the difference between the contract price and the market price at the time and place of delivery. This is the rule as stated in Section 64 of the Uniform Sales Act, chapter 121½, page 2371, Smith-Hurd Illinois Revised Statutes 1925. In this case, however, it appears that the vendee proceeded under section 60 of that Act, which in the case of goods of a perishable nature provides that the vendor may re-sell goods and recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

It is further argued that the court erred in its instructions with reference to the check. Upon that subject the court told the jury that if it believed from the evidence that a bona fide dispute existed between the parties; that Tucker and Kokenes sent Gimino a check in full settlement of all obligations,

and further that Cimino retained the check an unreasonable length of time in his possession without returning it to Tucker and Kokenes, then Cimino accepted the check and was not entitled to recover; that whether or not Cimino did retain the check an unreasonable length of time was a question of fact. Further, that where a debtor sends its creditor a check that shows a statement to the effect that it is tendered in full settlement of all obligations to date, the creditor's acceptance of the check will operate as a full settlement and satisfaction of all claims, owing to the creditor by the debtor previous to that date.

We think this instruction correctly stated the law. There was conflicting testimony as to the circumstances under which the check was given and retained. It has been held by this court that a retention of a check under such circumstances for a period of three months becomes and amounts to an acceptance as a matter of law. Here, however, it was, we think, properly, in view of the conflicting evidence, submitted to the jury as an issue of fact.

It is further contended that the court erred in refusing to receive evidence as to whether the slaves tendered were of merchantable quality. Sub-section 2 of Section 15 of the Uniform Sales Act, Smith-Hurd Illinois Revised Statutes, chapter 121 $\frac{1}{2}$, is cited to this point. That sub-section applies to goods sold by description. The evidence here shows a sale by sample, and section 16, rather than section 15, is therefore applicable. In such a sale there are implied warranties that the bulk shall correspond with the sample in quality; that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and where the seller is a dealer in goods of that kind, that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. The rejected evidence was not admissible with reference to sale by sample.

The issue between these parties was submitted to a jury under instructions which, taken as a whole, fairly and accurately stated the law. The jury found for the defendant, and the judgment is affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

The issue between these parties was submitted to a jury under instructions which, taken as a whole, fairly and accurately stated the law. The jury found for the defendant, and the judgment is affirmed.

ATTORNEYS,

JOHN W. ANDERSON, JR., COUNSEL.

5865

JACOB GIDWITZ,
Appellant,

vs.

INTERNATIONAL FURNITURE CO.,
et al.,
Appellees.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 672

MR. PRESIDING JUSTICE HATCHETT
DELIVERED THE OPINION OF THE COURT.

The complainant below has appealed from an order and decree in and by which a general and special demurrer, filed by the defendants to his amended and supplemental bill, was sustained and the suit dismissed for want of equity.

The controlling question in the case is whether the court erred in sustaining the demurrer and in dismissing the bill. The material facts, as set forth in the amended and supplemental bill, are that the defendant, International Furniture Company, is a corporation, organized under the laws of the state of Illinois, with a capital stock of \$75,000, divided into 1,000 shares, 500 of which are Class A stock of a par value of \$100 per share, and 500 shares of which are Class B stock of a par value of \$50 per share.

The corporation, as originally organized, had a capital stock of \$100,000, and the respective owners of said stock and the respective amounts held by them, are as follows:

| | | |
|----------------------|---------|-----------------------|
| P. W. Pelts..... | 333 1/3 | shares Class A stock |
| Michael Gidwitz..... | 83 1/3 | shares Class A stock |
| Jacob Gidwitz..... | 83 1/3 | shares Class A stock |
| Adolph Cohan..... | 249 | shares Class B stock. |
| Miriam Cohan..... | 1 | share Class B stock. |

The bill also alleges that on March 14, 1923, the corporation was in need of money and unable to secure credit without assistance from the complainant. Whereupon, the complainant secured such credit by incurring a personal obligation; that complain-

THE NATIONAL BUREAU OF INVESTIGATION
OF THE DEPARTMENT OF JUSTICE

REPORT OF THE
SPECIAL AGENT IN CHARGE
OF THE
INVESTIGATION
OF THE
CASE

2401 A. 673

REPORT OF THE SPECIAL AGENT IN CHARGE
OF THE INVESTIGATION OF THE CASE

The complaint below was received from the Special Agent in Charge of the Chicago Division, dated July 1, 1934, and captioned as above.

The complaint charges that the defendant, [Name], is a member of the Chicago Division of the National Bureau of Investigation, and that he has been guilty of various acts of fraud and deception in connection with the sale of certain securities.

The complaint further charges that the defendant has been guilty of various acts of fraud and deception in connection with the sale of certain securities, and that he has been guilty of various acts of fraud and deception in connection with the sale of certain securities.

The complaint further charges that the defendant has been guilty of various acts of fraud and deception in connection with the sale of certain securities, and that he has been guilty of various acts of fraud and deception in connection with the sale of certain securities.

The complaint further charges that the defendant has been guilty of various acts of fraud and deception in connection with the sale of certain securities, and that he has been guilty of various acts of fraud and deception in connection with the sale of certain securities.

- 1. [Name] is a member of the Chicago Division of the National Bureau of Investigation.
- 2. [Name] has been guilty of various acts of fraud and deception in connection with the sale of certain securities.
- 3. [Name] has been guilty of various acts of fraud and deception in connection with the sale of certain securities.
- 4. [Name] has been guilty of various acts of fraud and deception in connection with the sale of certain securities.
- 5. [Name] has been guilty of various acts of fraud and deception in connection with the sale of certain securities.

The Special Agent in Charge of the Chicago Division, dated July 1, 1934, and captioned as above.

The Special Agent in Charge of the Chicago Division, dated July 1, 1934, and captioned as above.

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The Special Agent in Charge of the Chicago Division, dated July 1, 1934, and captioned as above.

The Special Agent in Charge of the Chicago Division, dated July 1, 1934, and captioned as above.

ant is still liable upon said guaranty to the amount of \$7,840.60 and will so remain liable until giving written notice of its discontinuance to the bank, which he cannot do without injuring the credit and standing of the corporation.

The bill also alleges that Philip W. Pelts is the nephew of complainant, and that the complainant originally became interested in the corporation upon representations made by one Leo Weber and Adolph Cohen that they had invested in said business between \$35,000 and \$41,000, and complainant agreed to join them in the business and put up cash equivalent to their net assets, and that it was agreed that Cohen and Weber should receive one-half of the stock and complainant and those with him the other half of the stock in the proposed corporation; that the brother-in-law and stepfather of Philip W. Pelts advanced to his nephew \$15,000 which with \$5,000 theretofore turned over by the complainant to Pelts enabled him to invest \$24,000 in the business, complainant and his brother investing a further sum of \$13,500 in said business, to make up the balance of \$37,500; that Cohen and Weber received one-half of the stock of a par value of \$37,500, complainant, his brother and nephew stock of the par value of \$37,500, and that the remaining \$25,000 worth of stock went into the treasury of the company; that Cohen and Weber, before the incorporation of the company, were extended credit by the Community State Bank, of which the complainant was an officer, in the sum of \$2500, and after the incorporation this credit was increased to \$5,000 and later by persuasion of the complainant to \$10,000, the complainant guaranteeing the bank against loss; that other officers of the bank criticised complainant for the credit as thus extended, whereupon it was arranged to transfer the account of the bank to another bank and apply for credit with said bank, but the bank refused, upon investigation, to extend such credit, which was

finally obtained through the complainant signing the guaranty hereinbefore mentioned.

It is further averred that it was the desire of the complainant at all times to secure a one-half interest of the business for his son, but that his said nephew was unfriendly in this regard; that Adolph Cohan also knew of this desire of complainant and of the unfriendly attitude of Pelts and that the proposition thereafter made and described in the bill, which complainant accepted, was agreed to as made by Cohan with the purpose of influencing said nephew to join with him in securing favorable action from the Board of Directors of the Company for such things as Cohan might desire, including a fraudulent raise in the salary of the officers of the company.

The bill further avers that in the latter part of January, 1925, Adolph Cohan visited Michael Gidwitz, the brother of complainant, and made overtures to him for the purchase of complainant's stock and the stock owned by Michael Gidwitz; and thereupon complainant proposed to Cohan that he, the complainant, should make a proposition in writing as to the amount of money and what the Company would be willing to give for the interest of complainant and his brother in the Company; that on February 2, 1925, Cohan, believing that he and his said brother would, if they acted in the matter at all, act together, submitted a proposition in writing; that complainant and his brother never intended to purchase additional stock in the company, and that if any additional stock was to be purchased the same was to be by complainant alone for the sole and only purpose of providing a business for complainant's son, and that complainant, if he purchased the said stock of said Adolph Cohan, intended to return said stock with his present holdings to his son, so that his son might be financially interested in the company and take part in the conduct of the business of the company, so that

finally obtained through the commission of King the property here-
insider mentioned.

It is further stated that it was the desire of the
commissioner as all things to secure a well-defined interest of the prop-
erty for his son, and that his said nephew was ultimately in this
regard; that John Cohen also knew of this desire of commission-
er and of the ultimately acquisition of John and that the acquisition
thereafter made and described in the bill, when commission-
er agreed, was agreed to as made by Cohen with the purpose of influence-
ing said nephew to join with him in securing a similar action from
the Board of Directors of the Company for some estate as John said
before, resulting a financial loss to the estate of the officers
of the company.

The bill further states that in the latter part of Janu-
ary, 1900, through Cohen's efforts, John Cohen, the brother of com-
missioner, and also ventured to him, for the purpose of commission-
er's and the estate owned by John and Cohen; and between commission-
er and Cohen to Cohen that he, the commissioner, should make a propo-
sition in writing as to the amount of money and what the property
was to be given to him for the interest of commission-er and his
brother in the Company; that on February 2, 1900, Cohen, delivering
that he and his wife's brother would, it was stated in the matter as
well, and together, submitted a proposition in writing; that upon
plaintiff and his brother never intended to purchase additional stock
in the company, and that if any additional stock was to be purchased
the same was to be by commission-er alone for the wife and only pur-
pose of providing a business for commission-er's son, and that upon
plaintiff, it is provided that the wife should at said John Cohen, in-
stead of being with John with the present intention to his son,
so that she and might be financially interested in the company and
take part in the control of the business of the company, as had

while the proposition to purchase the stock in said company from complainant and his brother was interesting to his brother, it concerned the complainant alone and did not concern his brother, Michael Gidwitz.

The bill further alleges that at the time the said proposition was submitted the complainant was confined to his home, being ill, and on February 4, 1925, Cohan was informed that the time stated in said proposition was too limited and that Cohan thereupon informed complainant's brother that Cohan was in no hurry and to pay no attention to the time limit in said proposition, and that complainant and his brother, Michael Gidwitz, could have all the time they wanted; that complainant then made an appointment with Cohan and that Cohan, Michael Gidwitz, and complainant met at the office of said Michael Gidwitz on February 6, 1925; "that thereupon your orator made another proposition to the said Cohan, wherein your orator agreed to purchase the 33 1/3 per cent interest the said Adolph Cohan had in said company, at the book value, as of January 1, 1925, which was stated by the said Cohan to be \$65,000 plus \$10,000 bonus for the good will, and that your orator would pay him, the said Cohan, \$30,000 cash when an accountant had checked up the statement hereinafter set forth, which was submitted by said Cohan, and which he said showed said book value as of January 1, 1925, and the balance either in second mortgage notes, the payment of which would be guaranteed by your orator, and which said notes were held and owned by your orator and secured by a second mortgage on the building located at 1832 to 1842 Humboldt Boulevard, which your orator had sold in December, 1923, for \$250,000, which second mortgage notes were dated December 19, 1923, and payable in series of four, \$125 each, on the 19th day of each month to and including June, 1928, and balance to be due on July 19, 1928, with 6 per cent interest per

annum, or, in lieu of said notes your orator would convey to the said Cohan the equity in a 3-story 12 apartment building with three 5-room and nine 4-room apartments owned by your orator, located at Marquette Road and Carpenter street, Chicago, with a monthly rental of \$835, at the price of \$70,000, subject to only an incumbrance of \$30,000, taxes and installments paid to date of the deed and said Cohan was to receive the balance of \$5,000 in cash, and if after an accountant had examined the books for the purpose of checking said statement of January 1, 1925, submitted by Cohan, it found that the book value of said stock was less than \$65,000, then the difference was to be deducted from the price; that thereupon the said Adolph Cohan accepted the offer of your orator and agreed upon Fillmore Herwich, a certified public accountant, to check said statement and informed your orator that he was satisfied to take either the said mortgage notes or the equity, as your orator might decide, and your orator thereupon decided to give the notes, to which said Cohan agreed, and said Cohan agreed to meet your orator on February 6, 1925, for the purpose of reducing said agreement to writing and thereby consummate said transaction. And your orator shows that the said Adolph Cohan never kept said appointment; that later on, to-wit, February 7, 1925, your orator met the said Adolph Cohan and requested him to meet that day in the office of Cohan's lawyer, and the said Adolph Cohan refused to meet on said day and fixed the following Monday to meet, when he refused to consummate said sale and still refuses to consummate same; that instead of consummating said transaction or sale, the said Adolph Cohan attempted to deliver to your orator a letter which purported to retract his said proposal of February 2, 1925, and he thereupon informed your orator that he would not go on with any sale and would not sell said stock to your orator; and your orator shows that, for the purpose of carrying through

said transaction with said Cohan, your orator made arrangements to procure and did procure \$30,000 wherewith to make payment of said stock to said Cohan; and your orator shows that he stands ready and willing to carry through said transaction and pay said Cohan the price he agreed for said stock, but said Cohan refused to sell said stock to your orator and continues to refuse so to do."

The bill also sets up a statement in detail of the assets and liabilities of the corporation, indicating, as thus computed, the book value of \$65,000, and avers the stock is an unlisted stock and is not for sale in the open market and cannot be bought except from parties hereinbefore mentioned as the holders and owners thereof; that it is utterly impossible for complainant to buy any of the stock, and complainant shows and charges that his only purpose in desiring the stock was to give it to his son so that said son might have an interest in an established business.

That it is the intention and purpose of Adolph Cohan to sell the stock either to Philip W. Felts or to the company, and that complainant believes he will do so unless he is restrained by an injunction; that Cohan and Philip W. Felts are in control of the company; that they own seventy-six per cent of the voting power of the corporation; that a special meeting of the board of directors was called for Saturday, February 21, 1925, to take some action with reference to the disposition of the stock or the assets of the corporation, and that notice of said meeting was forwarded to each of the directors of the company; that the board of directors is composed of four members, namely, Philip W. Felts, Adolph Cohan, Miriam Cohan, the wife of Adolph Cohan, and Michael Gidwitz; that they control the board of directors; that one of the purposes of this special meeting was to take action to dissipate the assets of said corporation and thereby compel complainant

and his brother to sell their stock in the company, and pending a hearing of the cause Philip W. Pelts, Adolph Cohan and Miriam Cohan should be restrained and enjoined from voting any of the stock or taking any action to the detriment of the rights and interest of complainant.

The bill also sets up that a meeting of the board of directors of the corporation was held at the time and place mentioned in the notice and the directors at the meeting undertook to pass two resolutions, one to employ a lawyer to defend this suit at the expense of the company and thereby save themselves the expense of such lawyer, and the other to double the salaries of Adolph Cohan and Philip Pelts and Adolph Cohan; that Philip Pelts and Miriam Cohan voted for that resolution and they were the only directors voting therefor, and thus this action was irregular and void; that the price agreed to be paid by said complainant to said Cohan for his stock is a fair price therefor, and is equal to about three times its par value, and that Adolph Cohan should be compelled to deliver the stock to complainant, upon the payment of the price agreed to be paid by him for the stock.

The bill further avers that complainant is ready and willing and able to comply with his part of the agreement.

The bill makes the defendants thereto, Adolph Cohan, Miriam Cohan, Philip W. Pelts, Michael Gidwitz, and International Furniture Company, a corporation, that they may be required to make full and direct answer to the same, but not under oath, the answer under oath being hereby expressly waived; that they may be restrained and enjoined from transferring any of the stock of Adolph Cohan upon the books of the company, or from voting any of the stock of Cohan to the detriment of the rights and interests of complainant, or from taking any action that would in any way prejudice the rights of complainant in and to the stock of Adolph Cohan

or from drawing any increase in salary under the resolution of February 11, 1925, or from paying any attorney for services in this cause, out of the funds of the company; and that Adolph Cohan may be compelled, by the decree of the court, to specifically perform the agreement to sell the stock to complainant.

The briefs and arguments in this case indicate three controlling questions: First, do the well pleaded facts alleged in the bill set forth a valid and subsisting contract for the purchase and sale of the stock in controversy? Secondly, assuming that the bill does set forth facts from which a contract between the parties for the sale of the stock must necessarily be inferred, is the contract of such kind and nature that a court of equity will grant specific performance of it? Thirdly, assuming that the preceding questions are answered in the affirmative, is the contract unenforceable by reason of the provisions of Section 4 of the Uniform Sales Act, which contains the substance of Section 17 of the original Statute of Frauds? See Section 4, Uniform Sales Act of 1915. (Callaghan's Ill. Stat. Ann., vol. 7, p. 7132).

If either of these questions is decided in favor of the defendant, the demurrer was properly sustained.

That the bill sets up much immaterial matter and is in some respects indefinite, is apparent when we note that the prayer for relief does not state specifically whether it is the supposed contract between the parties made on February 2, 1925, or one made on February 6, 1925, which complainant desires to have specifically performed.

From the argument, however, it is apparent that complainant relies on the supposed contract of February 6, 1925.

The law to be applied in cases where the specific performance of contracts is sought has been often declared, and the general rules governing relief of this kind are well set forth

of the company was intended to secure the completion of
February 11, 1908, or some day in the month of February in
this case, out of the funds of the company; and that such action
may be cancelled, by the action of the board, so specifically
holding the agreement to sell the stock as conditional.

The first and second of these conditions in this case include three
conditions: first, in the well known fact that
in the bill and with a valid and enforceable contract for the pur-
chase and sale of the stock in conformity with the bill, assuming
that the bill does not state that there is a contract between
the parties for the sale of the stock must necessarily be inferred,
in the contract of such kind and nature that a copy of which will
be sent to the parties to the bill, and that the contract
being questions are concerned in the bill, as the contract
is enforceable by means of the provisions of section 4 of the
bill, which contains the substance of section 17 of
the original bill of 1904, the section 4, which states
that of 1904. (California's bill, 1904, vol. 7, p. 1102).
It is one of these provisions as stated in the bill of

the bill, the contract was properly enforceable.
That the bill sets up such conditions as to the bill and is in
some respects enforceable, is enforceable when we see that the bill
for that case was actually enforceable in the case of the
contract entered into between the parties on February 2, 1908, or some day
on February 2, 1908, which was actually enforceable in the case of the
bill.

From the evidence, however, it is apparent that the
bill was not on the evidence entered on February 6, 1908.
The law as applied in cases where the contract
performance of contracts is not as has been often declared, and
the general rule governing the bill of this kind was well set forth

in Breake v. Eisendrath Co., 214 Ill., 199. "The specific performance of a contract will only be enforced where the terms are clear, certain, unambiguous, and either admitted by the pleadings or proven with a reasonable degree of certainty. Even in cases where all of these requirements are present a specific performance cannot be demanded as a matter of right, but rests in the sound discretion of the court, to be determined from all the facts and circumstances of the particular case. If the contract is unreasonable or unjust, or for any other good reason should not be enforced, a decree will not be granted, and such refusal will not be a ground for reversal unless it can be said that the sound discretion of the court has been abused." Clipson v. Villars, 151 Ill. 265; Woods v. Evans, 113 id. 186; Long v. Long, 118 id. 638; Brix v. Ott, 101 id. 70; Bauer v. Lumaghi Coal Co., 209 id. 316.

It is further undoubtedly the law that (while relief by the way of specific performance is not confined to contracts involving the conveyance of realty) where the contract involves the conveyance of personal property, as a general rule the court will grant specific performance only where there is no adequate remedy at law or where it becomes necessary to enforce a trust. Barton v. DeWolf, 108 Ill., 195; Cohn v. Mitchell, 115 Ill., 130; Ames v. Witbeck, 179 Ill., 458.

On the first question, namely, as to whether the facts as alleged by the bill show a valid contract for the sale of this stock, we have some doubt as to whether the allegations of the bill are sufficient to show a contract was in fact made. It is of course elementary that the minds of the parties must meet in order to make a contract, and when a proposition is made by one party and accepted by another, the proposition as made must substantially be accepted and the acceptance must substantially conform to the offer.

in Wells v. Wells, 111 Cal. 111, 199. The essential nature
of a contract will only be affected where the facts are clear,
certain, undisputed, and when established by the evidence or by
the admission of the parties. Then in such cases all of
these requirements are present and specific performance cannot be de-
manded as a matter of right, but rests in the sound discretion of
the court, to be determined from all the facts and circumstances of
the particular case. If the contract is unenforceable as against
the party who seeks enforcement, a decree will not be made, and such
relief will only be granted as a matter of favor and discretion.
It is not to be said that the sound discretion of the court has
been abused. Wells v. Wells, 111 Cal. 111, 199; Wells v. Wells,
111 Cal. 111, 199; Wells v. Wells, 111 Cal. 111, 199; Wells v. Wells,
111 Cal. 111, 199.

It is further submitted that the law does (while still
in the face of specific performance is not confined to contracts in-
volving the payment of money) where the contract involves the
conveyance of personal property, or a personal debt the court will
grant specific performance only where there is no adequate remedy
at law or where it becomes necessary to enforce a trust. Wells v. Wells, 111 Cal. 111, 199; Wells v. Wells, 111 Cal. 111, 199; Wells v. Wells, 111 Cal. 111, 199.

As the facts presented, namely, as to whether the facts
as alleged by the bill show a valid contract for the sale of this
stock, we have some doubt as to whether the allegations of the bill
are sufficient to show a contract was in fact made. It is of course
alleged that the stock of the corporation was in fact at stake
a contract, and when a question is made by one party and accepted
by another, the contract is made and is conclusively established
and the question must necessarily remain to the effect.

Angle-American Provision Co. v. Prentiss, 157 Ill., 506; Brach v. Matteson, 295 Ill. 387; Quinn v. Daly, 300 Ill. 273.

The proposition, as made by the complainant, which we have heretofore set forth in the exact words of the bill and at length, was, as the bill alleges, "accepted," but a doubt arises as to whether this acceptance was final when we read the further averment of the bill that the defendant Cohan agreed to meet complainant on February 6, 1925, for the purpose of reducing said agreement to writing and thereby consummating the transaction. Of course, the question of whether this contract was to be considered final, as stated in the oral conversations between the parties or only after it was reduced to writing, depends upon the intentions of the parties in that respect. The complainant cites Ridgway v. Wharton, 6 House of Lords, 267, on this point, but a careful reading of that case does not convince us that it sustains his contention. Indeed, the substance of the holding there was that even where a paper was drawn stating with considerable fullness the terms of the proposed contract, the fact that it was sent to a solicitor to have it reduced to form, would generally be considered cogent evidence that the parties did not intend to bind themselves until it was executed after being put in that form.

The complainant also cites and relies on Bolton v. Lambert, 41 Ch. Div. 295, but in that case there was an unqualified acceptance of an offer which was complete, and it was held that the mere fact that, in making the acceptance the acceptor said that he had instructed his solicitor to prepare the necessary documents would not of itself render the acceptance a conditional one.

The tendency of the courts, as will appear from an examination of the cases where similar questions have been considered in this State, is, we think, to hold, where the parties agree that an agreement shall be thereafter reduced to writing and be

United States v. [redacted], 187 U.S. 100; United States v. [redacted], 220 U.S. 387; United States v. [redacted], 220 U.S. 387.

The proposition, as made by the respondent, which we

have heretofore set forth in the head notes of the bill of exceptions, was, on the bill of exceptions, "accepted," but a doubt arises as to whether this acceptance was final when we read the further contents of the bill and the relevant portions of the bill of exceptions on February 1, 1925, for the purpose of retaining said bill of exceptions. It is contended that the bill of exceptions, of course, the question of whether it is correct was to be determined at that time, as stated in the oral conversations between the parties or only after it was returned to the trial judge. The respondent offers evidence of the parties in that respect. The respondent offers evidence of the parties in that respect, but, on this point, but a careful reading of the bill of exceptions shows that it contains his contention. Indeed, the substance of the bill of exceptions was that even where a paper was shown stating with certainty the witness the facts of the proposed contract, the fact that it was not so a witness to have it returned to him, would generally be considered to be evidence that the witness did not intend to bind himself. Until it was returned after being put in that form.

The respondent also offers and relies on United States v. [redacted], 41 U.S. 220, but in that case there was no question of an offer which was accepted, and it was held

that the case was not, in making the acceptance the necessary will that he had intended the witness to prepare the necessary documents would not of itself render the acceptance a condition.

The tendency of the courts, as will appear from an examination of the cases where similar questions have been considered in this court, is, we think, to hold, where the parties agree that an agreement shall be constructed by reference to the

thereafter signed by them, that whether this shall be a condition precedent to the completion of the contract must in each case be determined from the facts from which the intention of the parties can be determined. Baltimore & Ohio B. W. R. Co. v. People, 195 Ill. 423; El Reno W. G. Co. v. Stocking, 293 Ill., 494; Scott v. Fowler, 227 Ill., 104; Dreiske v. Eisendrath Co., 214 Ill. 199; Eolan v. O'Sullivan, 148 Ill. App. 316.

Taking the allegations of the pleading most strongly against him, as we think we must do, and considering the indefinite and incomplete nature of the proposition set forth, which it is alleged was accepted, we are inclined to the opinion that it was not the intention of the parties that the contract should become binding and complete until it had been reduced to writing.

Again, it is a serious question, even if we assume the existence of a contract, whether its provisions are so definite and certain and its terms so fair as to make it possible for the complainant to demand specific performance of it.

It will be noticed that the ultimate price to be paid depended upon a check-up of what is denominated the "book value" of the stock. What, to the minds of the parties, "book value" was is not made to appear. Certain it is that the courts, in so far as this question has been considered by them, have not been able to agree upon a definition. Steag v. Leopold Weil B. & I. Co., 126 La. 101; Gabble v. Gabble, 97 N. Y. Suppl. 773.

Can this court determine from the contract, as alleged in the bill, that Cohan and Gidwitz had the same thing in mind when the term "book value" was used? How was that book value to be determined by Horwich? The defendants ask: Did Gidwitz have in mind that Horwich should merely deduct the total liability items from the asset items as they appear on the books? If so, what books, or by what "check-up?" Did he have in mind that Horwich should act as

investigator, arbitrator, appraiser and judge as to what constituted the assets and liabilities of the corporation? If so, by what rule was he to determine? Should he take the cost, less depreciation, replacement value, cost or market value, the fair market value, fair cash market value, liquidation value, or going value of the real estate and leaseholds of the corporation, the plant, machinery and equipment, tools, dies, apparatus and implements, office furniture and fixtures, raw material on hand, goods in process, finished merchandise, merchandise in transit, merchandise returned by customers, defective, spoiled, damaged or unseasonable goods, accounts receivable, good, bad, or doubtful, and how would that question be determined?

In these and many other respects which might be suggested, the contract as set up in the pleading is so indefinite that it becomes impossible, it seems, to us, for a court to say that it is fair and reasonable, and one which a court ought to enforce.

The third question must also, we think, be answered contrary to the contention of the complainant. We think, even if it be conceded that the contract set forth in the bill is a valid one, definite and cogent, and one which ought otherwise be enforced, the court was nevertheless precluded from enforcing it by virtue of Section 4 of the Uniform Sales Act, supra.

We shall not undertake to discuss this question at length. The brief of the defendants, to which no reply brief has been filed by the complainant, discloses that there has been a conflict between the decisions of the courts of last resort in England and the United States as to whether Section 17 of the original Statute of Frauds, which is Section 4 of our Uniform Sales Act, is applicable to contracts providing for the sales of shares of stock in a corporation; the English courts holding that the statute

is not applicable to such contracts, those of the United States, with the exception of Maryland, holding that it is. The question has never been decided by the Supreme Court of this state, presumably for the reason that Section 17 of the original Statute of Frauds was not in force in this state until enacted as a part of the Uniform Sales act.

In view of the decisions of our sister states and the language of the Act, we hold that the statute is applicable. Section 4 of the Uniform Sales Act (unlike the corresponding section of the English statute) is made specifically applicable to "chooses in action," and in the following cases our courts have indicated that shares of stock in a corporation should be so classified. First National Bank v. Smith, 65 Ill., 44; Kellogg v. Stockwell, 75 Ill., 68; Magerstadt v. Schaefer, 213 Ill., 351; Rhea v. Powell, 24 Ill. App. 77; Miller v. Doran, 151 Ill. App. 527.

The order is affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

215 - 30476

NEW YORK LIFE INSURANCE
COMPANY,

Appellee;

vs.

ARTHUR A. ALLEN et al.
On Appeal of ARTHUR A.
ALLEN,

Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 672

MR. PRESIDING JUSTICE HATCHETT
DELIVERED THE OPINION OF THE COURT.

This appeal by Arthur A. Allen is from a decree finding that Attie M. Allen was the owner of certain bonds deposited in the court representing the proceeds of certain life insurance policies.

The proceeding was begun by bill of interpleader filed by the New York Life Insurance Co., which issued the policies, setting up that on September 12, 1902, the Company issued a policy of \$1000 on the life of Arthur A. Allen, and on September 17, 1902, four policies of \$1000 each were issued on his life; that the premiums had been duly paid, and that at maturity of the policies on the 17th day of September, 1922, there was due on the same the sum of \$6,727.90; that on January 14, 1907, the company received instruments dated January 12, 1907, changing the beneficiary in the first four of the said policies from Attie M. Allen to Jessie L. Allen, and on November 20, 1907, the beneficiary was changed from J. L. Allen to the executors, administrators or assigns of the insured; that on June 27, 1907, the insured appointed the Life Insurance Co. trustee by a trust agreement attached to the policies; and that on January 20, 1909, the company received an instrument entitled "Separation Agreement," dated January 15, 1909, made between defendants, Arthur A. Allen and his wife,

Attie M. Allen; that upon the maturity of the policies the proceeds thereof were claimed by both Attie M. Allen and Arthur A. Allen.

The bill further set forth the provisions of each of the policies, which were that the Insurance company would pay to Attie M. Allen, wife of Arthur A. Allen, the insured, or other beneficiary the sum of \$1000 upon the death of Arthur A. Allen, provided such death should occur within twenty years; that the insured reserved the right to change the beneficiary at any time, and that if the insured was living at the expiration of the twenty year period, the company would then apportion ^{to} the policy its share of the accumulated profits and the insured should have, among other options, the option to receive the entire cash value in cash and discontinue the policy, and if no selections were made by the insured then the policy would automatically be discontinued and the entire cash value held as a credit payable to the order of the insured; that the agreement, by which the company was appointed trustee, provided that in case the policy should become a claim by the death of the insured during the lifetime of his daughter, Marion C. Allen, and prior to her attaining the age of sixteen years, which would be on April 21, 1911, the company, as trustee, would receive the amount of the policy and hold it until Marion C. Allen was sixteen years of age, and that the agreement should become null and void if the insured should be living when she arrived at the age of sixteen years.

The answer of Attie M. Allen and Marion C. Allen claimed the fund for Attie M. Allen by virtue of certain provisions of the Separation Agreement, which will hereinafter be referred to, and the decree of the court sustains this contention.

There was practically no dispute as to the facts.

Arthur A. Allen in his own behalf testified that the policies were in his possession and had been since the respective dates thereof; that he had never assigned any interest in the policies or any of the benefits under them in case he should survive the period of twenty years, and he admitted the execution of the Separation Agreement.

Attie May Allen in her own behalf testified that they had but one child, Marion Campbell Allen, born April 21, 1895, and that she had the custody of this daughter until she became of age.

The Separation Agreement is in evidence. It is dated January 15, 1909, and provides that husband and wife have agreed to live separate and apart during the remainder of their lives; that the wife shall have the custody of the child, and that the husband will pay to the wife \$12.50 per week, and discharge the then existing family indebtedness; that the wife shall have the household furnishings as long as she wishes them, and that the payment of \$12.50 per week shall be in full satisfaction of the support of the wife and child and of alimony.

With reference to the insurance the contract provides:

"Said Arthur A. Allen shall also keep up and not permit to lapse or be cancelled for non-payment of dues or premiums, all of the life insurance and accident insurance policies now in force and carried by him upon his life, for the benefit of his said wife or daughter or both, and the beneficiaries named in said policies shall not be changed."

As tending to throw light upon the proper construction of this clause of the agreement, the court admitted in evidence, over the objection of Arthur A. Allen, a letter of said Arthur A. Allen written on February 21, 1909, (subsequent to the execution of the Separation Agreement) to his daughter. Referring to this life insurance, the letter states:

Arthur A. Allen in his own behalf testified that the children were in his possession and had been since the respective years thereof; that he had never assigned any interest in the children or any of the benefits under them in case he should survive the period of twenty years, and he admitted the execution of the separation agreement.

Arthur A. Allen in her own behalf testified that they had put the child, Arthur Frederick Allen, born April 11, 1890, and that she had the custody of this daughter until the summer of 1900.

The separation agreement is in evidence. It is dated January 11, 1900, and provides that husband and wife have agreed to live separate and apart during the remainder of their lives; that the wife shall have the custody of the child, and that the husband will pay to the wife \$15.00 per week, and five cents the then existing weekly subscription; that the wife shall have the household furnishings as long as she wishes them, and that the payment of \$15.00 per week shall be in full satisfaction of the support of the wife and child and all claims.

With reference to the income the contract provides: "That Arthur A. Allen shall also keep up and not permit to lapse on or be cancelled for non-payment of dues or premiums, all of the life insurance and accident insurance policies now in force and carried by him upon his life, for the benefit of his wife or children or both, and the beneficiaries named in said policies shall not be changed."

As stated at first light upon the proper construction of this clause of the agreement, the court differed in view thereon, over the objection of Arthur A. Allen, a letter of will Arthur A. Allen written on February 11, 1900, (subsequent to the execution of the separation agreement) to his daughter, Katherine, in this life insurance, the policy stated:

"Please tell Mamma that I received her letter. As to the insurances: I have I have one in the N. Y. Life as she knows. This is for \$5000.00. \$1000.00 of this is now payable to her upon proof of my death. The remaining \$4000.00 will be held in trust for you by the N. Y. L. Ins. Co. and paid to you in the form of an annuity of something like \$11.00 per week, to begin at the time you are 16 yrs. of age, and to continue for (I think) at least 8 years. If you die before you are 16 yrs. old, the whole of the \$5000.00 comes to Mamma at once. Should I be alive at the time you are 16 yrs. old, the whole thing reverts to Mamma after that, -- that is it becomes a regular insurance for \$5000.00 for her sole benefit."

It is earnestly argued in behalf of Arthur A. Allen that this letter was not admissible in evidence, because it is said the clause in the Separation Agreement with reference to the insurance policies is not ambiguous nor its meaning doubtful; that it does not purport to assign the insurance policies to Attie M. Allen, but merely obligates Mr. Allen to pay the premiums on all the policies then in force and carried by him upon his life for the benefit of his wife, or daughter, or both, and further that the beneficiaries named in the policies should not be changed. There is much force in this contention. The language of the provision does not seem to be ambiguous nor to require explanation in order to arrive at the clear intention of the parties.

Nor do we think that the letter admitted in evidence indicates, when carefully read, any further or different construction of this provision of the agreement. It is perfectly apparent we think, reading the letter to the daughter in the light cast upon it by the trust agreement, that what the writer says about the \$4000 to be held in trust for the daughter and paid to her in the form of an annuity, to begin at the time she is sixteen years of age and to continue for at least eight years, is a statement of fact as to what would happen in case of the father's death. It would then be perfectly true that if the daughter died before she was sixteen years of age, the father also having died prior to that time, that the whole insurance would revert to the mother and

become, as he says, a regular insurance for \$5000 for her sole benefit. There is no language, either in the provision of the Separation Agreement or in the letter, which can be construed into an assignment of these insurance policies, or that either the mother or the daughter were to take any benefits from the same, except upon the contingency of the father's death.

Courts do not make contracts for litigents and may not relieve them of the obligations arising out of the terms of contracts which have been voluntarily made. There is not a sentence, as we read them, in either the agreement or the letter, which would indicate that, with the father, mother and daughter living, there was any intention other than that the mother should receive the amount of \$12.50 per week with other properties specifically mentioned in the agreement.

The decree of the Superior court is reversed and the cause remanded, with directions to enter a decree finding Arthur A. Allen to be the true owner of the funds in controversy, and directing the same to be turned over to him.

REVERSED AND REMANDED WITH DIRECTIONS.

Johnston and McSurely, JJ., concur.

224 - 30485

LUDWIG H. KOEPKE, Appellee,

v.

GEORGE ZOELLER, Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

240 I.A. 672

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in the sum of \$100 entered upon the finding of the court.

The claim of the defendant was for work, labor and services rendered and materials alleged to have been furnished by plaintiff to defendant at defendant's request.

The statement of claim showed a total demand of \$119.32, which included interest amounting to \$1.72 accrued since the account was stated between the parties.

It is argued by the defendant that the judgment is not sustained by the evidence. The only witnesses who testified were the plaintiff and defendant. Plaintiff also introduced a post card signed by the defendant, in which defendant said that he would like to have plaintiff call and put in a new stop cock in the toilet in the yard, the card also stating, "you have to have a man to dig up the ground and this should be done soon before the weather will get too bad."

The plaintiff testified that on or about the 8th day of December, 1924, he went to defendant's drug store and presented a bill for \$117, and defendant told him he would pay for it in a week or so. The plaintiff also testified that he was not in the business of selling plumbing supplies, but that he purchased certain supplies for which he paid \$21.95. He further testified that he did not know how much time was spent in putting in this plumbing

100 - 100

WILLIAM M. HUNTER,
Attorney,
CHICAGO, ILL.,
Respondent.

WILLIAM M. HUNTER,
Attorney,
CHICAGO, ILL.,
Respondent.

240 I.A. 672

IN SENATE
JANUARY 10, 1911

This is an appeal by the defendant from a judgment in
the case of HUNTER versus the plaintiff of the court.

The claim of the defendant was for work, labor and
services rendered and materials alleged to have been furnished
by plaintiff to defendant at defendant's request.

The statement of claim showed a total amount of \$118.50,
which included interest amounting to \$1.75 accrued since the
amount was due between the parties.

It is agreed by the defendant that the judgment is not

examined by the defendant. The only witness who testified was
the plaintiff and defendant. Plaintiff also introduced a post card
signed by the defendant, in which defendant said that he would like
to have plaintiff call and get a new stop cock in the boiler
in the yard, the card also stated, "You have to have a man to fix
up the engine and this engine has been used before the engine will
get too hot."

The plaintiff testified that on or about the 10th day of
December, 1910, he went to defendant's yard and presented a
bill for \$117, and defendant said that he would pay for it in a
week or so. The plaintiff also testified that he was not in the
business of selling engine stopcocks, but that he purchased them
for which he paid \$117.00. He further testified that he
did not know how much time was spent in making the stopcock

and the work; that he was there two separate days, about an hour each day; further, that the union scale of wages for plumbers doing that kind of work was \$2.25 per hour.

The defendant testified that he desired only such work done as was outlined on the post card. He testified that he was present all the time each day, with the exception of a few hours, and that the plumber did not work any four days, or any thirty-eight hours as claimed by the plaintiff; that he worked only parts of days, about eight hours the first day, on the second about three hours and on the third day about one and a half, and that altogether the plumber did not work to exceed two full days of eight hours. For this time he said he was willing to pay.

The defendant also denied that he ever agreed to pay the sum of \$117 for the bill presented, but said that on the contrary, he told plaintiff it was too much and offered to pay him \$50 to settle it. This was the substance of all the testimony introduced. Thereupon, the following colloquy occurred:

The Court: "I believe Mr. Koepke is entitled to \$117, but as a personal favor to Miss Spooner, I will make it \$100, and I believe there was an account stated."

Miss Spooner: "I object to any such finding as being excessive and not conforming to the testimony. Mr. Koepke has testified to the value of the stuff furnished which was anywhere from thirty to fifty per cent of which he charged in his statement of claim. He also testified that he did not know how much work his assistant had put in on the place and that Mr. Zoeller, the defendant, admitted that the assistant worked the most of two days, or eight hours a day at the union scale of wage \$2.25 an hour, \$40 would be a plenty, and that \$22 is a liberal estimate of the value of the material furnished."

Thereupon, defendant made a tender in court of \$70, which was refused.

and the court said that he was there for a period of days, about a week
each day; together, that the value of the goods for the
period of time of which was \$10.00 per hour.

The defendant testified that he worked only with
some as was outlined on the past card. He testified that he was
present all the time each day, with the exception of a few hours,
and that the number of hours was not more than four days, or any longer.

Eight hours as stated by the defendant; that he worked only four
or five, about eight hours the first day, on the second about three
hours and on the third day about one and a half, and the afternoon
the number did not work to exceed two full days of eight hours.

For this time he said he was willing to pay.

The defendant also denied that he ever agreed to pay the
sum of \$115 for the bill presented, but said that on the contrary,
he said that it was too much and offered to pay him \$100 so
would it. This was the substance of all the testimony introduced.

Therefore, the following testimony occurred:

The court: "I believe Mr. Leslie is entitled to \$115,
and as a personal favor to Miss Spencer, I will
make it \$100, and I believe there was no account
opened."

Miss Spencer: "I object as my work finding as being excessive
and not returning to the testimony. Mr. Leslie
had testified to the value of the bill presented
that it was anywhere from \$115 to \$125 per hour
or which he charged in his statement of value.
He also testified that he did not know how much
work the defendant had put in on the place and
that Mr. Leslie, the defendant, admitted that
the defendant worked the most of two days, or
eight hours a day, the value of the
\$100 an hour, \$100 would be a figure, and that
it is a liberal estimate of the value of the
work that defendant."

Therefore, the court said a finding in favor of \$115, which was

released.

The Court: "I am making a finding of \$100 just because of the ability with which you have tried this case, but if you appeal this case, I will make a finding of the full amount of \$117.60."

Miss Spooner: "While I am always willing to, and am a good enough sport, to abide by the usual findings of the Court, yet I feel the Court must consider me a very cheap attorney if I am worth only \$17 in this case and I object to the remarks of the Court in penalizing my client for exercising his rights as a citizen to appeal."

The Court: "Mr. Zoeller, I don't believe a word you have said in this case."

Miss Spooner: "I object to the remarks of the Court in impeaching the character of my clients in open court. I do not represent a class of clients which the Court has implied in his remarks."

The Court: "If you appeal this case, I shall certainly set this judgment at \$117."

Miss Spooner: "I object to the remarks of the Court."

Plaintiff has not appeared in this court to support the judgment entered. Plaintiff relied upon a stated account supported only by his uncorroborated testimony which was denied by the defendant who also gave material testimony as to the time put in doing the work. This testimony was not rebutted.

The evidence indicates, however, as a matter of fact that the sum of \$70 was due to the plaintiff and as the trial was by the court, the judgment will be reversed with a finding of fact, and judgment entered here in favor of plaintiff for the sum of \$70, costs in this court to be taxed against the plaintiff.

REVERSED WITH A FINDING OF FACT.

Johnston and McSurely, JJ., concur.

224 - 30485

FINDING OF FACT.

We find as a fact from the evidence that there is due to the plaintiff, Ludwig W. Keepke, from the defendant, George Zoeller, on account of the claim for which suit is brought in this case, the sum of \$70.

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[illegible]

E. MALAUSKAS,
Appellee,

vs.

J. A. KOSCHING,
Appellant.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 673

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

In this case the plaintiff brought suit for forcible detainer, alleging that defendant withheld from the plaintiff possession of certain premises known as 5353 South Halsted street in the City of Chicago.

There was a trial by the court without a jury and a finding that the defendant was guilty and judgment upon the finding for the possession of the premises, and that a writ of restitution issue with judgment for costs, against the defendant.

At the close of all the evidence defendant made a motion that the issues be found in his favor, which was denied. Propositions of fact and of law were submitted to the court by defendant, and these rulings of the court are assigned as error.

The evidence tends to show, without dispute, that defendant entered into possession of the premises under a written lease dated March 3, 1924, made between defendant and one Meyer, at that time the owner of the premises; that the lease in and by its terms demised the premises, to be occupied for office and living rooms only, term beginning April 1, 1922, and ending April 2, 1925, at a rental of \$35 a month, payable in advance.

The lease in and by its terms provided, "Option hereby given for two years more with nominal increase of rent." The lease further provided that all of the covenants, promises, representations

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THOMAS H. HARRIS, JR.

in the city of Chicago.

connection of certain persons known as EARL BOWEN, Edward Bowen, and others, who were in the city of Chicago.

in this case the identity of the persons who were in the city of Chicago.

There was a trial by the court without a jury and a finding that the defendant was guilty and judgment upon the finding for the prosecution of the prisoner, and that a writ of habeas corpus was granted against the defendant.

At the close of all the evidence obtained, a verdict was rendered that the accused be found in his favor, which was denied. Proceedings of fact and of law were submitted to the court by agreement, and these findings of fact were entered as above.

228 a month, payable in advance.

Letter beginning April 1, 1932, and ending April 7, 1932, at a rental of \$1.00 per month, to be accepted for 1000 and 10000 pounds only.

Also the name of the publisher; and the name in one of the forms.

Letter dated March 2, 1932, with between defendant and one Mary, at that time.

Defendant's letter dated presentation of the witness under a written form.

The witness to state, without dispute, that the

The issue is not by the same standard, "action barely given for years more with physical increase of work." The issue

and agreements therein contained shall be binding upon, apply and inure to the benefits of the heirs, executors, administrators or assigns respectively of lessor and lessee, and further:

"If Lessee shall vacate or abandon said premises or permit the same to remain vacant or unoccupied for a period of ten days, or in case of the non-payment of the rent reserved hereby, or any part thereof, or of the breach of any covenant in this lease contained, lessee's right to the possession of the demised premises, thereupon shall terminate, with or without any notice or demand whatsoever, and the mere retention of possession thereafter by Lessee shall constitute a forcible detainer of said premises, and if the Lessor so elects, but not otherwise, and with or without notice of such election or any notice or demand whatsoever, this lease shall thereupon terminate, and upon the termination of Lessee's right to possession, as aforesaid, whether this lease be terminated or not. Lessee agrees to surrender possession of the demised premises immediately, without the receipt of any demand for rent, notice to quit or demand for possession of the demised premises whatsoever, and hereby grants to Lessor full and free license to enter into and upon said premises or any part thereof, to take possession thereof with or without process of law, and to expel and remove Lessee or any other person who may be occupying the said premises or any part thereof as a member of his family or otherwise," etc.

The evidence for the plaintiff was to the effect that he purchased the premises in September, 1924, and that the defendant paid the rent for September, October, November and December of that year, but did not pay any of the rent which thereafter accrued; that plaintiff twice demanded payment thereof, and defendant replied that he did not have the money; that plaintiff then asked him to vacate the premises, and that defendant promised to move in March; that he did not do this, but remained in possession up to the time of the trial.

The defendant denied that he had ever said that he would not pay the rent because he did not have it. On the contrary defendant says that in a conversation with plaintiff in the early part of January, 1925, defendant told plaintiff that he would pay the rent but refused to pay a repair bill demanded by the plaintiff, and that he had another conversation to the same effect in the month of February, and again about the 10th of March, and upon the trial defendant tendered to the plaintiff rent for the months of January,

February, March and April. Plaintiff offered to accept the rent for January, February and March, and thereupon defendant tendered the amount of rent due for those three months in the sum of \$105, which the plaintiff accepted.

On rebuttal one Andrews testified for plaintiff that he had a conversation with defendant in the latter part of February, 1925, in which defendant said that he had a place at Fifty-second and Wentworth which he was figuring on moving into; in fact, the witness said that he had told him that several times, and that defendant had a sign up in his window indicating that he was to move.

The plaintiff, in rebuttal, denied testimony of the defendant to the effect that in December, 1924, defendant had asked him for a lease, but on the contrary testified that defendant told him that he was going to move. He says that defendant gave him a check for the rent, which there were not sufficient funds to meet; that defendant never offered to pay him rent for January, February and March, and never asked him about getting the lease extended, but promised to move. The plaintiff further testified that defendant never came to him and said that he would pay the rent and not pay the repair bill.

The court refused to find as a fact, as requested by defendant, that defendant told plaintiff in December, 1924, that he wished to continue the tenancy of the premises, and also refused to hold that in that month the defendant informed the plaintiff, in substance, that he wished to occupy the premises in question beyond the 2nd day of April, 1925, under the option in the lease, and refused to hold that the plaintiff stated to the defendant that defendant had no right to occupy the premises under the lease beyond April 2, 1925, or that plaintiff had refused to enter into negotiations, as requested by plaintiff, for an increase of the rent for

On January 1, 1964, the following information was received from the Bureau of the Census, Washington, D. C.:

On November 2, 1964, the following information was received from the Bureau of the Federal Bureau of Investigation, New York City, New York, dated November 2, 1964, and captioned as above:

[illegible][illegible]

the term of said lease, which might ensue after April 2, 1925, and refused further to hold that plaintiff had, as early as the month of December, 1924, proposed to establish an oil filling station on the property occupied by the defendant and, as a part of that intention, not to permit the defendant to occupy the premises after April 2, 1925, and communicated that intention to the defendant prior to that time.

The court also refused to hold, although requested, that the defendant was ready, able and willing to pay plaintiff the rent reserved by the lease, and that plaintiff had refused to accept it unless defendant also paid another demand, which defendant contested upon the merits.

The defendant submitted propositions of law, which were also refused by the court, and upon these rulings the defendant assigns errors. He contends here for the proposition that the mere holding over, after the expiration of the time specified in the lease, constituted an election on the part of defendant to hold for the additional or extended term, citing 35 Corpus Juris, p. 1036, Gusak v. Gunning, 109 Ill. App. 583, and other cases so holding.

We think, however, the ruling of the court upon the propositions of law become immaterial in view of the findings of fact. By the terms of the lease, the continuance of the same, not only for the extended term but for the prior term as well, depended upon the payment of the rent, and the finding of the court and its rulings upon the request to find matters of fact, indicate that it was the opinion of the court that the defendant had wrongfully failed to pay the rent reserved for more than three months prior to the expiration of the original term.

The defendant does not argue that the finding of the court is against the evidence, and it is therefore unnecessary to discuss the propositions of law.

The judgment is affirmed.
Johnston and McSurely, JJ., concur.

AFFIRMED.

The fact that the witness, who was called after April 1, 1905, and
 returned to his home as soon as possible, as early as the month
 of December, 1904, returned to his home as early as possible on
 the property described by the defendant and, as a part of that in-
 terference, not to permit the defendant to occupy the premises after
 April 1, 1905, and consequently lost interest in the defendant
 after that time.

The court also refused to hold, although requested,
 that the defendant was guilty, who was willing to pay satisfaction
 the fact returned by the witness, and that defendant had refused to
 accept it unless satisfied with the witness's demand, which defendant
 was satisfied upon the return.

The defendant submitted propositions of law, which
 were also returned by the court, and upon those matters the witness
 and said as above. The defendant's proposition was that the
 court should overrule the admission of the law provided in
 the issue, connected with the question on the part of defendant is
 that for the admission of evidence, which is the witness's
 R. 1000, Clark v. Whitman, 100 Ill. App. 325, and other cases as
 being.

The witness, however, in ruling of the court upon the
 proposition of law because defendant in view of the findings of
 fact. By the terms of the issue, the admission of the witness, not
 only for the witness's return but for the witness's return as well, is made
 from the witness of the return, and the finding of the court and the
 witness's return as the witness of fact, including that it
 was the opinion of the court that the defendant had wrongfully
 failed to pay the witness's return for the witness's return after the
 expiration of the year 1905.

The defendant does not argue that the finding of the
 court in making the witness's return is in violation of the
 Illinois Constitution of 1870.
 The finding is affirmed.
 Judgment and costs affirmed. Ill. App. 325.

MIDWESTERN COMPANY,
a corporation, Appellee,

v.

WARSHAWSKY COMPANY,
a corporation, Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

240 I.A. 673

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in the sum of \$2000 entered upon the verdict of a jury, motions for a new trial in arrest of judgment having been overruled.

The statement of claim alleged that on November 24, 1922, plaintiff purchased from defendant an air compressor for the sum of \$1200, paying upon the purchase price the sum of \$200, the balance to be paid when the compressor was removed from defendant's warehouse; that when delivery was requested, the compressor had been sold.

The affidavit of merits alleged that it had been agreed that the compressor would be removed and the balance of \$1000 paid within ten days; that defendant failed to comply with its agreement in these respects; although often requested; whereupon defendant sold the compressor at a reduced price.

Evidence was submitted by the parties tending to sustain their respective contentions, and the issues submitted to a jury, with the result above stated.

The evidence tended to show the sale of the compressor on November 24, 1922, and the payment of \$200 on that date. There was a conflict in the evidence as to whether the compressor was to be paid for and removed within ten days, as alleged in the affidavit of merits. It was not denied that the air compressor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3401 A. 873

PLAINTIFF'S EXHIBIT
EXHIBIT NO. 1
PLAINTIFF'S EXHIBIT
EXHIBIT NO. 2

IN RE: THE ESTATE OF JAMES H. HARRIS
DECEASED

This is an appeal by the defendant from a judgment in the case of James H. Harris, deceased, the verdict of a jury, returned for the trial in cases of James H. Harris, deceased.

The statement of claim alleged that on November 14, 1941, plaintiff purchased from defendant an air compressor for the sum of \$1100, paying upon the purchase bill the sum of \$200, the balance to be paid when the compressor was received from defendant's warehouse; that when delivery was requested, the compressor was not sent.

The plaintiff's motion alleged that it had been agreed that the compressor would be received and the balance of \$900 paid within ten days; that defendant failed to comply with its agreement in time requested; although often requested; defendant refused to deliver the compressor at a stated price.

Plaintiff was entitled by the parties to remain in their respective positions, and the issues remained as a jury trial the result above stated.

The evidence tends to show the sale of the compressor on November 14, 1941, and the payment of \$200 on that date.

There was a conflict in the evidence as to whether the compressor was to be paid for and removed within ten days, as alleged in the plaintiff's motion. It was not denied that the air compressor

was resold to a man named Sanders in January, 1923, for \$1000.

For several reasons, the judgment must be reversed.

In the first place, there is no evidence upon which to base the damages allowed by the jury. The only evidence on that issue was given by one King, who testified that he was an industrial representative for Westinghouse Air Brake Co., and that in November, 1922, the list price of the National Brake & Electric Company's three-cylinder air compressor No. 537-A motor was \$4500, usually sold under discount of ten per cent, making a net price of \$4050, f.o.b. Milwaukee; that the same price existed in December, 1922, and January, 1923, and that he supposed the freight charge from Milwaukee to Chicago would be around \$40 or \$50; that he had possibly sold ten compressors at the price stated, but had never sold any in Chicago.

The real question at issue upon plaintiff's theory of the case was, What was the fair cash market value of the air compressor at Chicago, Illinois, at the time it was sold to Sanders? The evidence of the list price would not establish that fact. Cook County v. Harns, 10 Ill. App. 24, affirmed 108 Ill. 151. See also Fowler v. County Commissioners, 6 Allen 92.

Again, the court by the sixth instruction told the jury that if the jurors believed from the evidence that the defendant "wrongfully" neglected or refused or placed himself in such a position that he could not deliver the goods purchased by plaintiff, according to the contract, "then you should find the issues for the plaintiff." Where an instruction, as here, directs a verdict, it is well settled it must contain all the material facts and conditions essential to such a verdict. Pardridge v. Cutler, 168 Ill. 504; Illinois Iron & Metal Co. v. Weber, 196 Ill. 526. This instruction ignored the theory of the defense.

The instruction was erroneous, and the verdict of the

was referred to a new number between in January, 1930, for \$1000.

For several reasons, the judgment must be reversed.

In the first place, there is no evidence upon which to base the

conclusion drawn by the jury. The only evidence on this issue

was given by one man, who testified that he was in the

representative for Washington at Lake Oka, and that in

November, 1929, the idea came of the National Bank of America

company's interest in the company No. 107-A motor car \$1000,

usually sold under license of ten per cent, selling a new price of

\$1000, F.O.B. Milwaukee; that the same price existed in December,

1929, and January, 1930, and that he reported the finding made

from Milwaukee to Chicago would be around \$1000; that he had

initially sold ten companies of the motor car, but had never

sold any in Chicago.

The trial question as to the value of the motor car

the case was, that the fact such motor car in the air

company in Chicago, Illinois, at the time it was sold to the

The evidence of the fact price would not establish that fact. See

Chicago v. Bank, 10 Ill. App. 2d, 100 Ill. App. 2d, 100 Ill. App. 2d, 100 Ill. App. 2d.

Chicago v. Bank, 10 Ill. App. 2d, 100 Ill. App. 2d, 100 Ill. App. 2d.

Again, the court by the same language told the jury

that if the jury believed from the evidence that the defendant

"was guilty" of the crime as charged or if the jury believed that the defendant

that he could not deliver the motor car to the defendant, "then you should find the defendant not guilty."

As to the defendant, "then you should find the defendant not guilty."

As to the defendant, "then you should find the defendant not guilty."

See Chicago v. Bank, 10 Ill. App. 2d, 100 Ill. App. 2d, 100 Ill. App. 2d.

As to the defendant, "then you should find the defendant not guilty."

As to the defendant, "then you should find the defendant not guilty."

jury, particularly as to the amount of the damages, is clearly against the weight of the evidence.

For the errors indicated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

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319 - 30581

SEYMOUR E. HENIKOFF et al.,
(Complainants),

vs.

JOSEPH LAVIN et al.,
(Defendants).

MAX GOLDMAN,
(Cross-Complainant),
Appellee,

vs.

SEYMOUR E. HENIKOFF et al.,
(Cross-Defendants).

On Appeal of JOSEPH LAVIN,
Appellant.

240 I.A. 673

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

MR. PRESIDING JUSTICE MATCHETT

DELIVERED THE OPINION OF THE COURT.

By this appeal Joseph Lavin, cross-defendant below, seeks the reversal of certain parts of the decree entered.

The cause was heard by the Chancellor upon exceptions to the report of a master in chancery, to whom it had been referred. The decree does not expressly over-rule the findings of the master or sustain the exceptions thereto, but is, nevertheless, contrary to these findings and recommendations.

The bill of complaint was filed by Seymour E. Henikoff and Horace Miah, who on January 10, 1923, by warranty deed executed by Andreas Clausen took title to certain real estate described in the bill.

The bill makes Joseph Lavin and Max Goldman defendants thereto, alleging that they had caused certain contracts for the sale of the real estate in question to be recorded in the recorder's office of Cook County, Illinois, thus clouding the title of com-

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plainant.

The bill prayed that these clouds might be removed. Defendants answered, denying the equity of the bill, and replications were filed.

Thereafter defendant Goldman filed a cross-bill, in which he alleged that a contract had theretofore been made between Lavin and himself whereby Lavin agreed to sell and Goldman to buy said real estate. He alleged that he at all times had been ready, able and willing to comply with the contract and prayed an accounting. Complainants Foreman Trust & Savings Bank, under the name of Foreman Brothers Banking Company, Andreas Clausen and Joseph Lavin were made defendants to the cross-bill. The Bank answered, admitting that the sum of \$1,000 had been deposited with it pursuant to a certain contract between Lavin and Goldman, and that it was holding the money and was ready to pay it to such person as the court might direct.

Lavin answered admitting the execution of the contract with Goldman and denying the other allegations of the cross-bill and asserting that Goldman by his default had forfeited the \$1,000 deposited with the bank. The complainants answered, disclaiming any interest in the matters set up in the cross-bill.

The master found that Clausen on January 10, 1923, was the owner of the real estate described; that on that date he sold and conveyed it to Henikoff and Kish, that the deed had been recorded, that complainants had since that date been in possession of the premises, collecting the rents and paying interest on the incumbrances; that Andreas Clausen and Joseph Lavin entered into a contract under date of October 22, 1922, which was recorded in the recorder's office of Cook County on November 21, 1922, by which Clausen agreed to sell and Lavin to buy the premises; that on November 22, 1922, Joseph Lavin and Max Goldman entered into a

contract for the sale by Lavin and the purchase by Goldman of the said premises, and that Goldman caused this contract to be recorded in the office of the recorder of deeds of Cook County on December 13, 1922; that Clausen and Lavin were able, ready and willing to comply with the contracts made by them, and that it was not until January 5, 1923, that Lavin notified Clausen that his contract with Goldman could not be completed, and thereupon Andreas Clausen consummated the deal with the complainants; that after Lavin entered into the contract with Goldman on November 22, 1922, he delivered to Goldman the abstract of title covering the premises involved in the contract; that this abstract of title was examined by the attorney representing Goldman, who advised that it was satisfactory; that subsequently a number of conferences were had between the parties representing Lavin and Goldman relative to the closing of the deal, and that several times between November 22, 1922, and January 5, 1923, Goldman advised Lavin, or his representatives, that he, Goldman, would not close the deal with Lavin because he thought Lavin was making too much money on the transaction; that the contract between Lavin and Goldman was made subject to the contract between Lavin and Clausen, and that under the terms of the Lavin-Goldman contract Goldman deposited with the bank the sum of \$1,000 as earnest money, which is still held by the bank under the terms and provisions of a contract between Goldman and Lavin; that the contract between Goldman and Lavin contains the provision, "In case of any controversy regarding the same the said bank shall be entitled to reimburse itself out of said enclosure, or the proceeds thereof, for any and all costs, attorneys' fees and other expenses which they may have incurred or become liable for on account thereof." And a further provision, "Should said purchaser fail to perform this contract

promptly on his part, at the time and in the manner herein specified the earnest money paid as above shall, at the option of the vendor, be retained by the vendor as liquidated damages, and this contract shall thereupon become and be null and void. Time is the essence of this contract, and of all the conditions hereof."

The contract further contains this provision: "This contract is subject to an existing contract between the seller and Andreas Clausen dated October 20, 1922, and it is agreed that both contracts will be closed simultaneously; that the deed shall run direct to purchaser mentioned herein and that purchase price shall be paid out by purchaser mentioned herein. However, a quitclaim deed will be furnished by the said Joseph Lavin."

The master further found that between November 22, 1922, and January 5, 1923, Lavin was at all times ready, willing and able to complete his contract with Goldman; that Goldman made default in his obligations under said contract, and that by reason thereof Goldman had forfeited to Lavin the earnest money deposited with the bank, and that Lavin was entitled to that sum of money, less the expenses of the escrow agent as found; that the contracts were clouds upon the title, which should be removed; that the expenses of the bank should be allowed in the sum of \$103.

Prior to the entry of the decree the parties filed a stipulation to the effect that the answer of the bank should be treated as a bill of interpleader, and that the cross-bill and the several answers of Menikoff, Misch and Lavin should be treated as several answers to this bill, and that the evidence returned by the master should be held to be evidence on the issues thus made up, and that the bank was entitled to retain the sum of \$103, as found by the master.

The decree recites the pleadings and the stipulation of the parties, removes the contracts from the record as clouds

upon the title of complainants, and makes the following finding supplementary to or inconsistent with the report of the master:

"That at no time was Joseph Lavin possessed of title to the said premises; that he was at no time on or previous to January 19, 1923, prepared to convey or tender a deed to the said premises, and he did not tender a deed of conveyance to the said Max Goldman, nor fix any time within which he would require the said Max Goldman to perform his contract, upon penalty of forfeiture in case of his failure therein, and that said Max Goldman is entitled to said money in escrow as aforesaid."

In accordance with and in conformity to that finding, the decree directed that the sum of \$897, held in escrow by the Bank was the property and money of Goldman, and the Bank was ordered to pay the sum over to him. It is this provision of the decree that cross-defendant Lavin seeks to have reversed.

The finding of the master to the effect that Goldman had refused to go through with the deal with Lavin because he thought Lavin was making too much money on the transaction, is not over-ruled or exception thereto sustained by the Chancellor.

Lavin argues here that this finding of fact not being contradicted, the tender of a deed was unnecessary on his part.

That a refusal of the purchaser to perform, or his notification to the vendor that he is unable to perform, relieves the vendor of the necessity of tendering a deed, seems to be the general rule. (39 Cyc, 1377).

The law does not require the performance of an idle act or one which would be useless. Bucklen v. Hasterlick, 135 Ill. 423. This rule is not limited, as cross-complainant supposes, to specific performance of contracts. Where one party refuses to perform and the other is anxious, ready and willing to perform, a tender of an abstract or guaranty policy is unnecessary. Lyman v. Gedney, 114 Ill., 368.

The record, we think, sustains the findings of the master. Even Goldman's cross-bill asserts that he has demanded repayment of the money and charges the perpetration of a fraud upon defendant, of which there is no proof in the record. The alleged fraud set up in the cross-bill was that Lavin had told defendant that he was to pay \$14,000 for the real estate, while as a matter of fact he was to pay only \$13,000 for it, but the record is destitute of evidence tending to prove any such representation was made.

There is, therefore, no evidence in the record upon which to base the finding of the decree to which Lavin objects, nor is the finding of the decree that Lavin did not acquire title a sufficient basis for the order since the contract between Lavin and Goldman provided that the two contracts would be closed simultaneously, and that the deed should run direct to the purchaser. Lavin, however, furnishing a quit-claim deed. Moreover, Goldman never based his refusal to carry out the contract upon that ground. Lang v. Nedenberg, 277 Ill., 368.

The recommendation of the master's report was right, and that part of the decree which directed the money in the hands of the bank to be turned over to Goldman not being sustained by the evidence, the decree is reversed and the cause remanded with directions to enter a decree in accordance with the recommendation of the master.

REVERSED AND REMANDED WITH DIRECTIONS.

Johnston and McSurely, JJ., concur.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JOHN PETRILA,

Appellee,

v.

CITY OF CHICAGO, a municipal
corporation, WILLIAM E. DEVER,
Mayor of the City of Chicago,
AL F GORMAN, City Clerk of the
City of Chicago, THOMAS P. KEANE,
City Collector of the City of
Chicago, and MORGAN A. COLLINS,
General Superintendent of Police of
the City of Chicago,

Appellants.

240 I.A. 673

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. PRESIDING JUSTICE MATCHETT

DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendants, the City of Chicago and certain of its officers, from an order and judgment directing the issuance of the writ of mandamus, as prayed for in the relator's petition. The cause was heard upon the relator's second amended petition and the answer of the respondents thereto, a jury being waived and the cause submitted to the court. The relator has not appeared in this court to sustain the judgment.

The only evidence offered in behalf of the petitioner upon the hearing was that which he gave in his own behalf. In reply to questions by the court, he stated that he was the owner of the building involved, which was a two-story brick structure; that he intended to run a soft drink parlor; that he was not going to sell any drinks or moonshine or anything; that he had a license at one time; "they searched the first floor and the basement and found some stuff; never closed the place; they had search warrant for first flat and basement."

In response to questions from his attorney, the relator stated further that there was a store in the front, and they didn't arrest him but arrested his wife; that he was not in Chicago

at that time; that she was not fined. " * * * When the police searched the place they found nothing being sold; the time of the search when police officers found stuff in rear I didn't live in flat in question, but rented same; I have filed my application for license."

The answer of the defendants to the petition denied that the petitioner was a person of good moral character and reputation, and asserted that on October 9, 1923, police officers of the City of Chicago found intoxicating liquors in the premises and in the possession of said petitioner, which he kept in connection with his business and for the purpose of sale, in violation of the city ordinances of the City of Chicago and the statutes of the State of Illinois, in such case made and provided; that such facts having been presented to the Mayor, petitioner's license was revoked in accordance with the provisions of the ordinance hereinbefore referred to, and that because of such facts, the petitioner is not a fit and suitable person to have a license.

The relator did not file any replication to the answer, and under well settled rules of pleading in this condition of the record material facts averred in the answer are admitted on the record. Simmons v. Jenkins, Admr., 76 Ill. 479; People v. City of Rock Island, 215 Ill. 491.

It is well settled that the writ of mandamus only issues where the petitioner has a clear legal right to have the thing done which he requests, and that the request will be denied when the right of the petitioner is doubtful.

There was no evidence offered other than that which we have recited to sustain the allegations of the petitions. This evidence was wholly insufficient.

The judgment is reversed and the cause remanded.
REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

at that time; that she was not there. " * * * When the police searched the place they found nothing being said; the time of the search when police officers found still in your I didn't live in that in question, but wanted same; I have filed my application for license."

The record of the defendant to the petition denied that the defendant was a person of good moral character and reputation, and asserted that on October 8, 1931, police officers of the City of Chicago found intoxicating liquors in the premises and in the possession of said petitioner, which he kept in connection with his business and for the purpose of sale, in violation of the city ordinance of the City of Chicago and the statutes of the State of Illinois, in such case make and provide; that such facts having been presented to the Mayor, petitioner's license was revoked in accordance with the provisions of the ordinance heretofore referred to, and that because of such facts, the petitioner is not a fit and suitable person to have a license.

The petitioner did not file any objection to the answer, and under well settled rules of pleading in this condition of the record and that facts asserted in the answer are admitted on the record. Alfred W. Johnson, Jr., vs. Ill. 402; People v. John

It is well settled that the wife of defendant only license where the petitioner has a clear legal right to have the same, and that the request will be denied. People v. Johnson, Jr., Ill. 402; People v. John

There was no evidence offered other than that which was more needed to sustain the allegations of the petition. This evidence was wholly insufficient. The petition is reversed and the case remanded. Alfred W. Johnson, Jr., vs. Ill. 402; People v. John

446 - 30710

PEARL W. CHAVERS,
Appellee,

vs.

RICHARD HILL, Jr.,
Appellant.

50732
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 674

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant, Richard Hill, Jr., from a judgment in the sum of \$5,000, entered against him and in favor of the plaintiff in an action on the case for malicious prosecution.

The plaintiff sued with the defendant, Hill, Anthony Overton, Robert R. Jackson, S. A. T. Watkins, Edward S. Miller, and John W. Robinson, and alleged in the first count of his declaration that he was a good and honest citizen of the state and had never before been suspected of having been guilty of the confidence game or receiving deposits in the bank after the same was known by him to be insolvent, but that the defendants, contriving and maliciously intending to injure him in his good name and to bring him into public scandal and disgrace, and to impair his financial standing and good credit among his business associates, on the 26th day of January, 1923, falsely and maliciously conspired to and did procure one Elsie Green to and that she did appear before one of the judges of the Municipal court, and falsely and maliciously and without any reasonable or probable cause whatever, charge the plaintiff with having feloniously instigated and carried on a confidence game, and thereby procured a warrant for the apprehension of plaintiff and procured him to be arrested and imprisoned and kept in prison for the space of three hours; that on a hearing before

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473 A.I.O.42

THE UNIVERSITY OF CHICAGO PRESS

Journal of Management Studies, 19(6), 703-718.

There is no record of the defendant, Edward Miller, Jr., in the New York State Prison records. The defendant, Edward Miller, Jr., is a resident of New York City, and is a member of the New York State Bar Association. The defendant, Edward Miller, Jr., is a resident of New York City, and is a member of the New York State Bar Association.

The plaintiff went with the defendant, Miss, and only
Overton, Robert F. Jackson, A. A. F. Watkins, Edward A. Miller, and
John F. Robinson, and almost to the first of his testimony
that he was a good and honest citizen of the state and had never
before been convicted of having been guilty of the same
and on receiving evidence in the book after the same was known by
him to be incorrect, but that the defendant, defendant and male
evidently intended to injure him in his good name and to bring him
into public scorn and disgrace, and to injure his financial
standing and good credit among his business associates, on the
24th day of January, 1903, falsely and maliciously conspired to
and did procure one John Brown to write and send the report before
one of the judges of the Kentucky court, and falsely and maliciously
and without any reasonable or probable cause whatsoever, charge the
plaintiff with having maliciously injured and carried on a con-
spiracy with, and thereby procure a warrant for the arrest of the
plaintiff and proceed to have the same executed and imprisoned and kept
in prison for the space of three years; that on a hearing before

one of the judges he was, on March 30, 1923, adjudged not to be guilty of the supposed offense.

The second count charges that on February 1, 1923, in the City of Chicago and Cook County, the defendants falsely and maliciously, and without any reasonable or probable cause, conspired to procure and to induce, and did induce, persuade and direct, one Jim Thornton to charge, and he did charge, the plaintiff with having committed the offense of receiving deposits while a bank was insolvent, knowing the same to be insolvent, and falsely and maliciously caused plaintiff to be arrested and imprisoned, and that of this charge he was fully acquitted on March 30, 1923.

The defendants filed a plea of not guilty, and at the close of all the evidence the court instructed the jury to find the defendants Overton, Jackson, Watkins, Miller and Robinson not guilty, and such verdict was accordingly returned as to these defendants. A verdict was returned finding defendant Hill, Jr., guilty.

Motion by defendant, Hill, to set aside the verdict and grant a new trial in arrest of judgment being over-ruled, judgment was entered on the verdict.

The plaintiff has not appeared in this court to support the judgment. The defendant has stated and argued quite at length and with numerous citations of authorities, fifteen points, any one of which, if sustained, would be sufficient to reverse this judgment.

As both counts were based upon the theory of a conspiracy, naming the known alleged conspirators, it is indeed difficult to understand upon what theory only one defendant could have been found guilty. We understand the law to be that it is impossible for a person to conspire with himself. At least two persons are necessary to bring a conspiracy into being. Heaps v. Dunham et al., 95 Ill., 586.

and on the other he was, on March 30, 1937, sentenced not to be guilty of the charged offense.

The second report charges that on February 1, 1937,

in the city of Chicago and Cook County, the defendant falsely and maliciously, and without any reasonable or probable cause, conspired to procure and to induce, and did induce, persons and direct, and the defendant in charge, and his family, the plaintiff with having committed the offense of receiving deposits while a bank was insolvent, knowing the same to be insolvent, and falsely and maliciously caused plaintiff to be arrested and imprisoned, and that at this time he was duly sentenced on March 30, 1937.

The defendant filed a plea of not guilty, and at the close of all the evidence the court instructed the jury to find the defendant guilty, Jackson, Watkins, Miller and Robinson not guilty, and such verdict was accordingly returned as is shown in Exhibit A. A verdict was returned finding defendant Hill, Jr. guilty.

Action by defendant, Hill, to set aside the verdict and grant a new trial in arrest of judgment being overruled, judgment was entered on the verdict.

The plaintiff has not appeared in this court to support the judgment. The defendant has stated and taken notice of death and other numerous citations of authorities, fifteen points, any one of which, if sustained, would be sufficient to reverse this judgment.

As both counts were based upon the theory of a conspiracy, and the known Illinois conspiracy law, it is inherent that only by understanding how this theory may be set aside could have been found guilty. We understand the law to be that it is impossible for a person to conspire with himself. At least two persons are necessary to bring a conspiracy into being. Hill v. Jackson et al.

Again, the record fails to disclose proof of malice, and the evidence indicates to our minds that there was probable cause for believing the plaintiff guilty of the offenses with which he was charged. Glenn v. Lawrence, 280 Ill. 581.

We think the court erred in receiving in evidence the record of the criminal proceedings, without the same being limited to the purpose of showing that these proceedings had terminated. Skidmore v. Bricker, 77 Ill., 164; Gentzen v. H. M. Hooker Co., 173 Ill. App., 127; Tynalty v. Parker, 100 Ill. App. 382; Anderson v. Fletcher, 228 Ill. App. 372.

Again, the attorney for the plaintiff was permitted, over defendant's objection, to state as facts material matters which were not in evidence. Chicago Union Traction Company v. Adam Lauth, 316 Ill., 176; Rost v. Noble & Co., 316 Ill., 357.

It will be unnecessary to consider numerous other errors which are pointed out. For those indicated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

455 - 30719

FINANCIAL SECURITIES CORPORATION,
Appellee,

vs.

OTTO LANGOS, Doing Business as
LANGOS ELECTRIC & MANUFACTURING
COMPANY, (Not Inc.)
Appellant.

5076
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 674

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from an order denying the motion of defendant to vacate a judgment theretofore entered upon certain judgment notes. These notes were thirty-five in number, all dated May 15, 1924, and were for the sum of \$50 each, except the last note, which was for the sum of \$111.42. The notes became due one each month beginning July 12, 1924, were payable to the "LaSalle Machinery Exchange," and secured by a chattel mortgage. These notes were endorsed without recourse by the "LaSalle Machinery Exchange" as payable to the order of the plaintiff.

Judgment was entered on January 8, 1925, for \$1,172.05 and \$150 attorney's fees. On January 28, 1925, the defendant presented its motion and affidavit in support thereof to vacate the judgment.

The affidavit in support of the motion stated that defendant first learned of the entry of the judgment against him on January 14, 1925, when an execution issued on the judgment and was served upon him, and that the day following said service he retained an attorney to act for him.

The affidavit states the fact to be that on or about May 15, 1924, the defendant purchased of the LaSalle Machinery Ex-

change, the payee named in the notes, at the wholesale price of \$2100, certain new machinery and paid on the purchase price \$350, and executed and delivered to said LaSalle Machine Exchange, vendor, the thirty-five notes mentioned in the suit for the balance of the purchase price, and to secure the notes executed and delivered to the vendor a chattel mortgage on the machinery; that thereafter, on or about September 20, 1924, and before any of said machinery had been used, defendant (then having no use for said machinery) and said vendor (who was then and there the bona fide owner and holder of said notes and chattel mortgage) entered into an oral agreement whereby defendant was to and then did deliver to said vendor said machinery, together with other new machinery owned by the defendant, in full satisfaction and payment of the notes mentioned in this suit, and said notes were to be cancelled by said vendor and destroyed, and defendant relying on said vendor complying with said agreement supposed said notes and chattel mortgage had been cancelled and destroyed, until served with said execution; that in a discussion just prior to said agreement between defendant and said vendor, each stated to the other that as said \$2100 was at a wholesale price and said machinery being new and unused, the said vendor would be able to dispose of the machinery at a price in excess of \$2100, and in further consideration said vendor would accept and cancel said notes, and said defendant would allow said vendor all he got from the sale of said machinery (if he sold the same) in excess of \$1750, the unpaid balance on said machinery; "that the plaintiff herein is no other than said payee named in said note operating under a different name; that plaintiffs are not the bona fide owners and holders of said notes to confess judgment thereon; that said payee placed said notes as collateral security for its loan from plaintiff only, and not as a sale of said notes to plaintiff by said vendor, notwithstanding

the purported endorsement on said notes to the contrary."

The statement in this affidavit as to the facts in regard to the agreement for the delivery of the machinery and the cancellation of the notes, is further corroborated by the affidavits of two witnesses, and these affidavits also were presented in support of the motion.

While it is true that affidavits of this character are to be construed most strongly against the party making application, (Chicago Fire Proofing Co., et al. v. Park National Bank, 145 Ill. 481) we think this affidavit set up matter which, if true, would constitute a complete defense to the notes.

It does not appear from the notes, nor otherwise from the record, what the "LaSalle Machinery Exchange" is, and while the plaintiff is a corporation the affidavit alleges that it is not the bona fide owner and holder of the notes, and that the payee and plaintiff are one and the same person. If so, then the notes are subject to the defense set up in the affidavit.

For the reasons indicated the judgment denying defendant's motion will be reversed and the cause remanded.

REVERSED AND REMANDED.

Johnston and McSurely, JJ., concur.

the proposed amendments are well known to the country.

The amendment in this bill is to the effect that

regard to the agreement for the delivery of the machinery and the
imposition of the power, is further extended by the bill to the
of the bill, and these amendments are well known to the
of the bill.

It is to be noted that the bill is to be amended and

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472 - 30736

HERMAN C. STRUVE,
Appellee,

v.

MICHAEL PISSANI,
Appellant.

5077a
APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

240 I.A. 674

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment entered in favor of plaintiff in an action in forcible detainer. The trial was by the court without a jury.

It is contended by the defendant that the notice given by plaintiff was insufficient to terminate the tenancy, and this is the controlling question on the record.

The evidence shows that defendant entered into possession of the premises under a written lease by which plaintiff demised the same to him for a period beginning on October 1, 1913, and ending on April 30, 1916, the total rent being \$3100, which was to be paid in monthly installments of \$100 each.

When this original lease expired on April 30, 1916, the defendant remained in possession of the premises, apparently, under an oral arrangement, by which, in addition to the space theretofore occupied, he was given a little more room in another building and for these two premises, he paid a rental of \$180 per month. That arrangement continued until about 1922 when defendant gave up the additional space and thenceforth paid a rental of \$100 per month. There was no written lease between the parties other than that originally made.

On February 18, 1925, plaintiff, landlord, caused to be served upon defendant the following notice:

BERNARD C. STONE

Appellee

Appellant

CHIEF OF DEFENSE

2401 A. 674

CHIEF OF PROSECUTION

Appellant

THE PROSECUTION

ADVISED THE COURT OF THE COURT

This is an appeal of the defendant from a judgment entered in favor of plaintiff in an action in forcible detainer. The trial was by the court without a jury.

It is contended by the defendant that the notice given by plaintiff was insufficient to terminate the tenancy, and this is the controlling question on the record.

The defendant claims that defendant entered into possession of the premises under a written lease by which plaintiff demanded the same to him for a period beginning on October 1, 1915, and ending on April 30, 1916, the total term being 180 days, which was to be paid in monthly installments of \$100 each.

When this original lease expired on April 30, 1916, the defendant remained in possession of the premises, apparently under an oral agreement, by which, in addition to the above tenancy, he was given a little more room in another building and for these two premises he paid a rental of \$100 per month. That arrangement continued until about 17th day of defendant gave up the additional space and therefor paid a rental of \$100 per month. There was no written lease between the parties after that date.

On February 12, 1916, plaintiff, defendant, came to

be served upon defendant the following notice:

"NOTICE OF TERMINATION OF TENANCY

To Michael Pissani:

You are hereby notified, that I have elected to terminate your tenancy by virtue of which you now occupy, as my tenant, the following described premises, to-wit: The entire premises known as 3153 Lincoln Avenue, together with all woodsheds, outbuildings, garages and barns belonging thereto, situated in the City of Chicago, County of Cook and State of Illinois. And you are hereby further notified, to quit and deliver up the possession of said premises to me at the end of the present term, provided sixty days intervene, otherwise at the end of the Sixty day term, which commences next after the service of this notice. You are therefore hereby accordingly required to surrender the possession of the within premises to me on the 30th day of April, 1925. Dated this 18th day of February, A. D. 1925.

(Signed) Herman C. Struve, Landlord."

It is the contention of the defendant that the tenancy created was one from year to year, while the plaintiff contends that the tenancy was one of month to month.

At the time of the service of this notice, an act to amend Sections 2 and 6 of an act to revise the law of landlord and tenant, approved May 1, 1873, as amended, approved June 27, 1923, was in force. See Laws of Illinois, Fifty-Third General Assembly, 1923, page 428. It provided: "In all cases of tenancy by the month, or for any other term less than one year, where the tenant holds over without special agreement, the landlord shall have the right to terminate the tenancy by sixty days' notice in writing, until July 1, 1925, and thereafter by thirty days' notice, in writing, and to maintain an action for forcible detainer or ejectment."

The notice at that time necessary in order to terminate a tenancy from month to month is set forth in Section 5 of the Landlord and Tenant Act, Smith-Hurd's Illinois Revised Statutes, 1925, Chapter 80, page 1609. It is as follows: "In all cases of tenancy from year to year, sixty days' notice in writing shall be sufficient to terminate the tenancy at the end of the year. The notice may be given at any time within four months preceding the last sixty days of the year."

ORDER OF TERMINATION OF TENANCY

To Michael Piskany:

You are hereby notified, that I have elected to terminate your tenancy by virtue of which you now occupy, as my tenant, the following described premises, to-wit: The office premises known as 2183 Lincoln Avenue, together with all contents, furniture, fixtures and other personal property, situated in the City of Chicago, County of Cook and State of Illinois. And you are hereby notified, to this end of the present term, to vacate the premises at the end of the thirty days, which commence next after the service of this notice. You are therefore hereby absolutely required to remove the possession of the within premises to me on the 25th day of April, 1935. Dated this 15th day of February, A. D. 1935.

(Signed) William L. Brown, Landlord.

It is the contention of the defendant that the tenancy created was for one year to year, while the plaintiff contends that the tenancy was one of month to month.

At the time of the service of this notice, he was in possession of the premises, and he was not in possession of the premises at the time of the service of this notice.

and tenant, executed by J. L. Brown, as landlord, executed by J. L. Brown, as tenant, and in force of Illinois, City-Third General Assembly, 1935, page 450. It is further stated that the tenancy was one of month to month, and the tenant was not in possession of the premises at the time of the service of this notice.

the month, or for any other term less than one year, under the terms of the lease, or for any other term less than one year, under the terms of the lease, or for any other term less than one year, under the terms of the lease.

It is further stated that the tenancy was one of month to month, and the tenant was not in possession of the premises at the time of the service of this notice.

right to terminate the tenancy by giving thirty days' notice, in writing, and to maintain the premises in a suitable condition.

It is further stated that the tenancy was one of month to month, and the tenant was not in possession of the premises at the time of the service of this notice.

writing, and to maintain the premises in a suitable condition.

The notice was given to the tenant in order to terminate the tenancy, and the tenant was not in possession of the premises at the time of the service of this notice.

tenancy from month to month in force in Section 5 of the Landlord and Tenant Act, and the tenant was not in possession of the premises at the time of the service of this notice.

1935, Chapter 40, page 1000. It is further stated that the tenancy was one of month to month, and the tenant was not in possession of the premises at the time of the service of this notice.

of tenancy from year to year, which began on the 1st day of January, 1935, and the tenant was not in possession of the premises at the time of the service of this notice.

be entitled to terminate the tenancy at the end of the year.

The notice was given to the tenant in order to terminate the tenancy, and the tenant was not in possession of the premises at the time of the service of this notice.

the last day of the year.

Comparing the notice with the provisions of the statutes it would seem that whether we consider the tenancy created by the acts of the parties here was one from year to year or from month to month, the notice served was sufficient in form and was served at a time which complied with the requirements.

The judgment is affirmed.

AFFIRMED.

Johnston and McSurely, JJ., concur.

and to meet living and other needs of the

STUDIES

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500 - 30764

LESLIE A. JOHNSON,
Appellee,

vs.

BLAUER AND GOLDSTONE COMPANY,
a Corporation,
Appellant.

50 Ha
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 674

MR. PRESIDING JUSTICE MATCHETT
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment in the sum of \$952.90, entered upon the finding of the court.

The statement of claim alleged a verbal agreement between plaintiff and defendant, whereby plaintiff was to conduct an advertising campaign at a cost, for the services of the plaintiff and for work and material to be furnished to the defendant and bills to be presented as the work progressed, of not to exceed \$2500. It was alleged that plaintiff incurred an expense of \$512.14 and also furnished material and labor of third persons in respect thereto in the sum of \$951 and was entitled to a retainer fee of \$142.95 and the sum of \$166.10 for services rendered in handling said advertising.

The affidavit of merits denied the allegations of the statement of claim, but admitted that defendant had agreed to pay the plaintiff for certain advertising, but denied that plaintiff properly performed said work, and stated that the plaintiff wholly failed to perform it, and thereupon defendant refused to pay for the work and offered the plaintiff \$100 in settlement of all claims, which the plaintiff accepted, and that thereupon the claim of the plaintiff was discharged.

It is contended by the defendant that the finding and judgment of the court are contrary to the evidence; that it is

2401.A.674

UNITED STATES DISTRICT COURT
SOUTHERD DISTRICT OF NEW YORK

WILLIAM A. BRIDGES, JR.
Plaintiff,
vs.
JOHN J. BRIDGES, JR.
Defendant.

IN SENATE
JANUARY 10, 1961

This report is by the defendant from a hearing in
the year of 1961, held upon the filing of the report.

The statement of claim alleges a verbal agreement

between plaintiff and defendant, whereby plaintiff was to conduct
an advertising campaign at a cost of \$100,000 for the services of the plaintiff
and for work and material to be furnished by the defendant
and also to be presented as the work performed, of not to be

used \$100,000. It was alleged that plaintiff incurred an expense of
\$100,000 in the year of 1961 and was entitled to a certain
amount of money in the year of 1961 and was entitled to a certain
amount of money in the year of 1961 and was entitled to a certain

amount of money in the year of 1961 and was entitled to a certain

The statement of claim alleged the defendant to

the statement of claim, but admitted that defendant had agreed to
pay the plaintiff for certain advertising, but denied that plaintiff
will properly perform said work, and stated that the plaintiff
wholly failed to perform it, and therefore defendant refused to
pay for the work and alleged the plaintiff \$100 in settlement of
all claims, which the plaintiff refused, and that defendant the
claim of the plaintiff was discharged.

It is concluded by the defendant that the finding and

statement of the court are contrary to the evidence; that is to

established by a preponderance of the evidence that the defendant paid to the plaintiff the sum of \$100 in full of all the claims of defendant, and further that the evidence shows a variance between the pleadings of the plaintiff and the proof submitted in support of the same.

As the question of the alleged variance was not raised upon the hearing, it will be unnecessary to discuss it; and the controlling question in the case therefore is, whether a preponderance of the evidence shows an accord and satisfaction.

The plaintiff testified that he was introduced to Mr. Goldstone of the defendant company by one of his own employees, a Mr. Schild, and that a conversation took place on June 19, 1922, to the effect that "We were to prepare a sample advertising for him and if the advertisement was satisfactory we were to build him an advertising campaign. We prepared an advertisement and he said go ahead and build the rest of the campaign."

The plaintiff further testified that he went ahead and wrote a number of ads., prepared the copy and all the mechanical work; that he did not get far because he was stopped by a letter from the defendant, in which defendant said he had received some invoices, but the amounts were not "in common with arrangements I had with you;" that he immediately went to Goldstone's office and Goldstone told him that the campaign was no good; that the expense was tremendous; that "everything was wrong and all he owed us was \$100. This was in December, 1922."

Plaintiff further testified that prior to that time the work had been all completed; that the plaintiff has built twelve or thirteen advertisements, the copy, the cuts and the signs and the art work, and all these bills had been charged to him; that he delivered the invoices for the same to the defendant, and plaintiff says, "At the last meeting we had I said to him that

if he would pay the outstanding bills, I had no hope of collecting it. I lost all confidence I had in him. I said, 'if you will pay the bills outstanding against your account and give me \$100, I will call it square.' He gave me \$100. He paid one ninety dollar bill. The exact amount of bills outstanding are about \$1,100."

On cross-examination plaintiff testified that when he first saw Mr. Goldstone, plaintiff said he was going to submit a sample of his work, and that in some agencies it was customary to get the O. K. of the client on everything that they did, if they didn't trust the client; that he never got Mr. Goldstone's signature or O. K. or the O. K. of Blauer and Goldstone Company on any print or any advertising matter that he submitted; that he did not have a signed contract; that he never had them write a letter to him about the agreement and never wrote them a letter about the agreement.

Plaintiff further testified that he had seen the check, which was produced, but it was not in the same condition as when he last saw it; that the bank's stamp was not on it then, and did not have the statement on it of settlement in full to date.

Mr. Schild testified, "We prepared these three ads., took them in to him. There was one we said we would build up for \$150, and if he liked that one, we could go ahead with the campaign and finish the thing up. 'Well,' he said, 'Go ahead and fix up this ad.'" The witness further says that it was taken back at the time when one of the salesmen or he, presumably Mr. Goldstone, was going to a convention, and he said that it was fine and that he would take it along with him, and asked for the privilege of taking along the other layouts, and that they let him take those along; that when he came back he said that he would see them, and if he liked them he would go ahead with them; and that when he came back, he at least said, "Fine, go ahead," and they went ahead and prepared the rest of the things; that they never saw Mr. Goldstone

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him thus the university and other wise from a letter about the
have a mutual interest; that he never had been with a paper in
proof of my understanding of the case; he explained; that he did not
know of the fact of the 17th March and that he was personally on duty
there at that time; that he never met Mr. Galassini's attorney
and the D. P. of the district on any other point than that, it does
seem to him that in some respects it was contrary to
the law and Mr. Galassini's attorney would be liable to

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at any time afterwards during the preparation of the ads. This, he said, was some time in September; that after receiving the letter they went over and took all the drawings and engravings to Mr. Goldstone, but he claimed that he did not want any of it, and that there was an argument back and forth about the fact of his telling them to go ahead with it, but Mr. Goldstone said that he did not say that, they thought they would let it rest awhile.

Samuel Stoltz, for the plaintiff, testified that he was an advertising artist, and that he had done a little over \$400 worth of work in connection with the Johnson service for Blauer Goldstone Company, and had rendered statements for this work, and that some time in October he had a talk with Mr. Goldstone, in which he, Goldstone, said he liked the work which Mr. Johnson had been doing for him very much.

For the defendant, Mr. Goldstone, the treasurer of the defendant company, testified that it was a wholesale jewelry business and doing considerable advertising. He says that in the conversation with plaintiff he asked what the approximate cost would be in the event "we approved what he submitted to us." The plaintiff replied that it would be in the neighborhood of \$150 for the proofs and the completed ads.; that later one or two ads. were submitted to him, and afterwards the plans of the ads. were submitted; that he told plaintiff and Mr. Schild that the ads. were unsatisfactory, and that the defendant could not use them, and he says that as a matter of fact they never did use them; that after receiving invoices from plaintiff in November, 1922, he wrote a letter, to which reference has already been made; that plaintiff thereupon came to his office and told him that he was hard up and needed money; that the witness told plaintiff that defendant did not owe him anything because the ads. submitted had never been approved with one possible exception; that plaintiff said that he was in

destitute circumstances, and the witness then told him that rather than prolong the matter, which was a disputed one, he would give plaintiff a check for \$100 "in full payment of all claims he had to date, which he agreed upon."

The witness further testified that he then called in the bookkeeper, Mr. Wray, in his presence, and told him to make a check to plaintiff's order for \$100 in full payment of claims plaintiff had; that Wray drew up the check and brought it to the witness, who signed it, and that he had not heard anything further of the matter until suit was filed. He further testified that the proofs and the ads. are not in possession of the defendant, but were, to the best of his knowledge, returned.

The check was introduced in evidence, being No. 5876, made by the defendant company, dated Chicago, December 18, 1922, to the order of plaintiff, for the sum of \$100. It is signed by Joe Goldstone, treasurer, and drawn on Greensbaum Sons Bank & Trust Co. In the left-hand corner is written, "In settlement of account in full to date." On the back of the check at the top are the words, "Settlement in full to date." It is endorsed by the plaintiff and Irya Romaine Johnson, and stamped "Paid."

It appears that the body of the check is in the handwriting of Mr. Wray, and Goldstone testifies that the notation on the face of the check, "In settlement of account in full to date," was on the check before he signed it and before he delivered it to the plaintiff in the case; that the notation on the back of the check at the top, "Settlement in full to date," was on the check before he signed it and before he delivered it to plaintiff, and that both of these notations are in Wray's handwriting.

The witness, Goldstone, further testified that he never signed an order for work to be done by the plaintiff; that he never gave anybody else an order for work that is to be done

upon; that he never G. K.'d any proofs that were submitted to him by plaintiff or anybody else in connection with this work. The check was given December 18, 1922, and this suit was started in September, 1923.

Mr. Wray, the bookkeeper, testified that he remembered clearly the incident of plaintiff being in the office in the month of December, 1922; that Mr. Goldstone called the witness in his office and asked him to make a check for Mr. Johnson for \$100; that he, the witness, went out and got the check ready for him and brought it back to them, and Mr. Goldstone said, "Now, Mr. Johnson, this check is in payment of all claims to date, in full settlement. Is that right?" Mr. Johnson said, "Yes, that's right;" that the witness then went back and put the notation on the back of the check to the effect that it was in settlement of all claims in full to date, and that when he brought it back for Goldstone's signature, Mr. Goldstone asked him whether he didn't think that he ought to put the notation on the front of the check, which he did. He says that this conversation took place in the presence of the plaintiff, ^{Goldstone}~~Goldstone~~ and himself. The witness says, positively, that the notations were on the face of the check and on the back of the check before Goldstone signed it.

The plaintiff, in rebuttal, testified: "I heard the testimony here of Mr. Wray stating that he came into Mr. Joseph Goldstone's office with this check and that Mr. Goldstone stated to him that this was in full of all demands to date and all claims to date. Mr. Goldstone made that statement to the bookkeeper. I didn't say anything. He told the bookkeeper to bring in a check for \$100, and he did."

There was further testimony in rebuttal by one Steltz, a creditor of plaintiff, who says that plaintiff brought the check over to him. He says the check is not in the same condition that

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1. The first of these is the fact that the evidence is not in the form of a confession, but is in the form of a statement made by a person who is not a party to the crime. This is a very important fact, and it is one which the jury must take into consideration. The fact that the statement was made by a person who is not a party to the crime is a fact which the jury must take into consideration. The fact that the statement was made by a person who is not a party to the crime is a fact which the jury must take into consideration.

There was in this testimony in respect to the death of a brother of Alvin, who was not identified with the check.

it was when plaintiff offered it to him, and that the notations on the front and back of the check were not there at that time. The memory of this witness, however, when tested upon cross-examination, indicates that as to other matters about the check it was quite deficient.

In view of all the evidence which we have recited, and particularly in view of the admission made by the plaintiff in his testimony in rebuttal, as well as weighing the probabilities, we regard as established by an overwhelming preponderance of the evidence, that the claim was disputed and that the check for \$100 was given in full satisfaction of it; and this being so, it follows that the finding and judgment of the court must be reversed.

Canton Coal Co. v. Farlin etc. Co., 213 Ill., 244; Snay v. Griesheimer, 220 Ill., 196; Bingham v. Browning, 197 Ill., 122; Lapp v. Smith, 183 Ill., 179; Ostrander v. Scott, 161 Ill., 339.

The judgment of the trial court is therefore reversed, with findings of fact and judgment for defendant here.

REVERSED WITH FINDINGS OF FACT
AND JUDGMENT HERE.

Johnston and McSurely, JJ., concur.

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FINDINGS OF FACT.

We find as facts that the claim for which plaintiff in this case, appellee, sues was in dispute between the parties, and that while so disputed the defendant gave to plaintiff a check for the sum of \$100, which plaintiff accepted in full settlement of his claim; that the parties therefore entered into an accord and satisfaction, which is a bar to plaintiff's claim.

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of his estate; that the parties thereto signed and sealed the same

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SAMUEL STROBL,
Plaintiff in Error,

vs.

J. J. INGELS,
Defendant in Error.

ERROR TO COUNTY COURT OF
COOK COUNTY.

240 I.A. 674

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is a writ of error prosecuted by the plaintiff, Samuel Strobl, from an order of the County court of Cook county, vacating a judgment by default in favor of the plaintiff after the term, on motion of the defendant in a proceeding under Section 89 of the Practice Act, which allows errors of fact to be corrected after the term at which a judgment was entered by motion in the nature of a writ of error coram nobis.

The defendant has made a motion to dismiss the writ of error on the ground that the order vacating the judgment in favor of the plaintiff is an interlocutory order and not a final appealable order. We are of the opinion that the order was a final appealable order and that the motion to dismiss the writ of error should be denied. Harris v. Chicago House Wrecking Company, 314 Ill., 500, 505, 508, 509; Graser v. Commercial Men's Association, 260 Ill., 516, 519, 520; Dimeo v. Hines et al., 229 Ill. App. 486, 489, 490; Bishop v. Illinois Western Electric Company, 221 Ill. App., 141, 143; Central Bond & Mortgage Company v. Roesser, No. 29456, opinion filed in this court, not reported.

In support of his contention that the order in question is not a final appealable order, counsel for the defendant cites the following cases: Walker v. Oliver, 63 Ill., 199, and Park Ridge v. Murphy, 258 Ill., 365.

Those cases relate to judgments other than judgments under section 89 of the Practice act. It was so held in the case of Cramer v. Commercial Men's Association, supra. (p. 519.)

The question to be determined on the writ of error is whether the County court erred in entering the order vacating the judgment by default after the expiration of the term at which the judgment was entered. The decision of this question depends upon the question of the sufficiency of the motion of the defendant under section 89. The motion of the defendant was demurred to by the plaintiff on the ground that the motion did not allege any error of fact which would justify the trial court in vacating the judgment. The motion of the defendant was as follows:

"And now comes J. J. Ingels, defendant in the above entitled cause, by George C. Geier, his attorney, and moves the court to vacate and set aside the judgment heretofore entered on the 27th day of August, A. D. 1924, to stay an execution as issued upon the said judgment and to vacate and set aside the default as entered on the 27th day of August, A. D. 1924, and for grounds of said motion this defendant shows the following:

1. That the judgment is void and erroneous in fact.
2. That the plaintiff has no cause of action against this defendant.
- 3/ That the declaration as filed in said cause contains the common counts and a special count.
4. That the special count is for breach of warranty.
5. That the common counts cannot be joined with a special count when the action is upon a breach of contract.
6. That the common count as pleaded should be stricken from the declaration.
7. That the judgment was entered for Six Hundred Fifty Dollars (\$650.00) and the special count alleges damages in the sum of Five Hundred Fifty Dollars (\$550.00).
8. That the plaintiff is insolvent and is indebted to the defendant in a sum far in excess of that claimed by the plaintiff.
9. That the said judgment is a fraud against the defendant and would not have been entered by the Court if the

Court was apprised of the facts of said litigation.

10. That the Court was imposed upon in entering said judgment.
11. That the rules of Court have not been complied with.
12. That no notice was served upon the defendant or his attorney prior to the entry of the default.
13. That the judgment in other respects is void and erroneous.
14. That the judgment is erroneous because the suit is based upon a warranty which must be declared specially in the declaration and to warrant the recovery plaintiff should have offered evidence to prove the special damages."

The errors of fact contemplated by section 89 must not be errors appearing on the face of the record or errors contradicting the finding of the court. The errors of fact must be facts unknown to the court when the judgment was entered, and must be facts of such character that if known to the court would have precluded, as a matter of law, the entry of judgment. Examples of errors of fact which would support a motion in the nature of a writ of error coram nobis, are such as the death of a nominal defendant, infancy without a guardian, disability of coverture, and insanity at the time of the trial. Chapman v. North American Insurance Company, 292 Ill. 179, 185; Marabia v. Thompson Hospital, 309 Ill., 147, 152; Satin v. Twin City Fire Insurance Company of Minneapolis, Minnesota, No. 30060, opinion filed in this court November 31, 1925, not yet reported.

In the case of Chapman v. North American Insurance Company, supra, the court said (pp. 185, 186): "It is important in considering this question to keep in mind this proposition: that the trial court cannot review itself or its own judgment and correct the same, either as to any question of fact found or decided by the court or as to any question of law decided by it after the term of court has ended. At any time before the term has ended the court may review its judgment as to matters of fact or matters of law decided by it and correct its judgment, if erroneous."

In the case of Marabia v. Thompson Hospital, supra, the court said (p. 152): "The writ of error coram nobis will not lie for error or mistake of the judges in point of law, but a writ of error must be sued out of the superior court to correct such error."

Testing the motion of the defendant by the principles announced in the cases above cited, we are of the opinion that the motion does not allege any errors of fact in the sense of section 89. The order of the trial court vacating the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Matchett, F. J., and McSurely, J., concur.

145 - 29983

PEOPLE OF THE STATE OF ILLINOIS
ex rel. AURELIA HARRIS, arrested
at the suit of L. M. SNITE,
Appellee,

vs.

PETER HOFFMAN, Sheriff of Cook County,
and DENNIS J. EGAN, Bailiff of the
Municipal Court of Chicago,
Appellants.

APPEAL FROM COUNTY

COURT OF COOK COUNTY.

240 I.A. 675

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendants, Peter M. Hoffman, Sheriff of Cook County, and Dennis J. Egan, Bailiff of the Municipal court of Chicago, from an order of the County court of Cook county, discharging the petitioner, Aurelia Harris, from the custody of the sheriff.

The petitioner was imprisoned at the suit of L. M. Snite for the alleged malicious conversion by the petitioner of property in a chattel mortgage, executed by the petitioner and her husband to secure a note for money borrowed from Snite. The petitioner filed a petition in the County court for release under the Insolvent Debtors Act. Prior to the proceeding in the County court Snite had begun an action of replevin in the Municipal court to recover the property. By leave of court Snite filed a count in trover in the replevin proceeding. Judgment was obtained against the petitioner in the replevin proceeding.

On the hearing in the County court on the petition under the Insolvent Debtors Act, the court permitted evidence to be introduced before a jury on the question whether malice was the gist of the action in the Municipal court. The jury found that malice was not the gist of the action.

In re Petition of Pauline Sawick, 207 Ill. App. 100,

POWER OF ATTORNEY OF EXHIBIT
TO THE AMERICAN BANKING ASSOCIATION
AS THE CASE OF L. E. SMITH
Appellate

AMERICAN BANKING ASSOCIATION

COURT OF THE DISTRICT OF COLUMBIA

240 I.A. 675

AMERICAN BANKING ASSOCIATION, Plaintiff of Cook County,
vs. L. E. SMITH, Defendant of the
County of Cook, State of Illinois.
Appellate

THE PETITIONER REQUESTS THAT THE COURT OF THE DISTRICT OF COLUMBIA

This is an appeal by the respondent, L. E. SMITH, from the
verdict of Cook County, and Dennis J. Ryan, Sheriff of the County,
not being of record, from an order of the County court of Cook
County, discharging the petitioner, American Bank, from the custody
of the Sheriff.

The petitioner was imprisoned on the writ of L. E. SMITH
while the alleged malicious conversation by the petitioner and
property in a chattel mortgage, executed by the petitioner and his
husband to secure a note for which he was bound from SMITH. The peti-
tioner filed a petition in the County court for release under the
Insolvent Debtors Act. Prior to the proceeding in the County court
SMITH had begun an action of replevin in the Municipal Court to re-
cover the property. By leave of court SMITH filed a writ of habe-
as corpus in the County court. Judgment was obtained against the
petitioner in the replevin proceeding.

On the hearing in the County court on the petition
under the Insolvent Debtors Act, the court rendered judgment to re-
lease the petitioner before a jury on the question whether SMITH was the
owner of the property in the Municipal Court. The jury found that SMITH
was not the owner of the property.

105, 106, it was held that in an action of trover in the Municipal court, where there is an inconsistency between the statement of trover with the affidavit attached, and the verdict of the jury, the County court was entitled to admit evidence offered by the petitioner to determine whether the petitioner maliciously appropriated the property.

Counsel for the defendants concede that malice is not necessarily the gist of an action in trover; and that in the case at bar the question whether malice was the gist of the action in the Municipal court is to be determined from an examination of the record.

We are of the opinion that the abstract of the proceeding in the Municipal court is not sufficiently full to enable us to determine the question whether malice was the gist of the action in the Municipal court. In this state of the record the order of the County court should be affirmed. Gies v. Shedd, 218 Ill., 309, 217, 218; Lave v. Pick, 177 Ill. App., 98, 99, 100; Lanigan v. J. C. Henderson & Co., 188 Ill. App., 568, 569; Thornton v. Knus, 120 Ill. App., 422, 424.

ORDER AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.

102, 103, it was held that the evidence of the witness was not sufficient to establish the fact that the witness was not a member of the organization at the time of the commission of the crime. The court also held that the evidence of the witness was not sufficient to establish the fact that the witness was not a member of the organization at the time of the commission of the crime.

[illegible][illegible]

155 - 30001

WILLIAM BURGESS,
Appellee,

vs.

JOHN MYERS and JOHN MORIARITY,
Doing Business as the Kenwood
Trucking & Teaming Company,
Appellants.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 675

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action in the Municipal court of Chicago brought by William Burgess, the plaintiff, against John Myers and John Moriarity, doing business as the Kenwood Trucking & Teaming Company, the defendants, to recover a balance alleged to be due to the plaintiff from the defendants for hauling dirt for the defendants. The amount in dispute is \$971.84.

The case was tried before the court without a jury. The court entered judgment in favor of the plaintiff in the sum of \$736.20. From the judgment the defendants have prosecuted this appeal.

The grounds on which the defendants rely for reversal relate to the evidence.

The precise issue, which is one of fact, is whether the plaintiff charged on the basis of $2\frac{1}{2}$ yard loads or 2 yard loads.

Counsel for the defendants contend that the judgment is manifestly against the weight of the evidence.

Counsel for the plaintiff maintain that the evidence is so inadequately abstracted by the defendants that the court cannot determine intelligently the question of the weight of the evidence; that according to the well established rule, a reviewing court will not examine the record to find grounds for reversing a judgment, but will presume that the court heard sufficient evidence to sustain the

WILLIAM BURGESS,
Defendant.

vs.

JOHN EDWARD BURGESS AND JOHN EDWARD BURGESS,
Plaintiffs as the General
Manager of the General
Manager.

WILLIAM BURGESS,
Defendant.

2401 A. 675

WILLIAM BURGESS AND JOHN EDWARD BURGESS, Plaintiffs as the General

This is an action in the Municipal Court of Chicago
brought by William Burgess, the Plaintiff, against John Edward
Burgess and John Edward Burgess, the Defendants as the General Manager of the
General, the Defendants. By reason of a balance owing to the
Plaintiff from the Defendants for hauling and for the
Defendants. The amount in dispute is \$971.86.

The case was tried before the court without a jury.
The court entered judgment in favor of the Plaintiff in the sum
of \$724.90. From the judgment the Defendants have presented this
appeal.

The grounds on which the Defendants rely for reversal
relate to the evidence.

The ground is that, which is not at issue, is whether
the Plaintiff charged on the basis of 10 tons loaded as 2 tons loaded.
Counsel for the Defendants contend that the Plaintiff is
entirely without the weight of the evidence.

Ground for the Plaintiff's contention that the evidence is
unimpeachably supported by the testimony that the weight amount
presented satisfactorily the question of the weight of the evidence;
and according to the well established rule, a reviewing court will
not venture to touch on this ground for reversal a judgment, but
will sustain the court's verdict unless evidence is shown to

judgment.

We are of the opinion that the testimony is not sufficiently abstracted to enable us to pass intelligently on the question whether the judgment is manifestly against the weight of the evidence. Six witnesses testified in the case. The transcript of their testimony, which comprises 218 typewritten pages, has been abstracted in the printed abstract in 15 pages.

Counsel for the defendants state that "The omissions of testimony referred to by counsel of appellee in general dealt with jobs not in dispute," and that "the other testimony ** was repetition and cumulative evidence, the gist of which was covered in testimony which was abstracted or which was not material to the issue as to whether or not appellee made out a prima facie case, and the other issues raised in appellants' brief."

We do not think that the explanation of counsel for the defendants is sufficient. Since we are asked to reverse the judgment on the ground that it is manifestly against the weight of the evidence, the testimony should be abstracted fully in order that we may determine whether the testimony relates to other "jobs not in dispute" and whether it was "cumulative" and "not material." We should not accept, without verification, the interpretation which counsel for the defendants place on the omitted testimony.

The rule is well settled that the appellant is required to furnish a complete abstract showing everything necessary to a determination of the questions involved on appeal. Kieszkowski v. Bestrom, 179 Ill. App. 73, 75; and that where the testimony is inadequately abstracted the presumption should be indulged that the evidence, if completely abstracted, would sustain the judgment. Glen v. Shedd, 218 Ill. 209, 218; Love v. Dick et al., 177 Ill. App. 98, 100.

It was at the election that the Secretary in fact actually contacted the writer as to your liability on the question whether the balance is actually against the subject or not. The witness testified in the case. The Secretary's report thereon, which was signed by the Secretary, was forwarded in the printed abstract in 1930.

1. The first thing I noticed when I stepped out of the plane was the cold, crisp air. It felt like a blanket after a long, hot journey. I looked down at the city below, a patchwork of green fields and small towns. The sun was just rising, painting the sky in soft, golden hues. I felt a sense of peace and tranquility that I hadn't experienced in a long time.

the testimony is correct. Since we have asked to reverse the judgment on the ground that it is manifestly against the weight of the evidence, the testimony must be admitted fully in error that we may determine whether the testimony relates to error "the case is correct" and whether it is manifestly against the weight of the evidence. We cannot not accept, without verification, the information with respect to the testimony of the witness.

The law is well settled that the question is resolved
 in favor of a complete abatement of the entire amount in a
 satisfaction of the question involved in Spaulding v.
Spaulding, 170 Ill. App. 75, 76; and that where the judgment is in-
 adequately satisfied the question should be resolved in the
 affirmative, it is completely satisfied, Spaulding v. Spaulding,
170 Ill. App. 75, 76; Spaulding v. Spaulding, 170 Ill.

It is also the rule that the court will not examine the record for the purpose of ascertaining whether a judgment should be reversed. Thornton v. Maus, 120 Ill. App. 422, 424; Salisbury v. Deutsch, 178 Ill. App. 633, 634.

Counsel for the defendants contend that the judgment of the court is based on hearsay evidence.

The abstract shows that on direct examination of the plaintiff certain testimony of the plaintiff, which appeared to be testimony given on his own knowledge, was shown on cross examination to be hearsay testimony. No objection was made to the testimony and no motion was made to strike it from the record. In this state of the record the court was bound to treat the hearsay evidence as competent evidence. Hoover v. Empire Coal Company, 149 Ill. App. 258, 263; Mason v. Truitt, 257 Ill., 18, 22; Slingluff v. Builders Supply Company, 89 Md. 557, 562; Lamb v. Taylor, 67 Md., 85, 93, 94; 2 Jones Commentaries on Evidence (Blue Book ed.), section 297, p. 634.

Furthermore it will be presumed in view of the inadequacy of the abstract that there was competent evidence independently of the hearsay evidence to support the judgment. On the trial by the court without a jury it will not be presumed that the court considered improper evidence in reaching a decision. The Merchants Despatch Transportation Company v. Joesting, 89 Ill., 152, 154.

For the reasons stated the judgment of the trial court is affirmed.

AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.

It is also the rule that the court will not require

the witness for the purpose of ascertaining whether a statement
should be received. Thompson v. State, 120 Ill. App. 455, 456; 457.

McIntyre v. State, 120 Ill. App. 457, 458.

Concededly the testimony contained in the testimony

of the court is based on hearsay evidence.

The objection above that on direct examination of the

plaintiff certain testimony of the plaintiff, which appeared to be

testimony given on his own knowledge, was shown as hearsay evidence

to be hearsay testimony. No objection was made to the testimony

and no motion was made to exclude it from the record. In this state

of the record the court was bound to treat the hearsay evidence as

competent evidence. Harvey v. State, 120 Ill. App. 457.

State v. Smith, 120 Ill. App. 457, 458; McIntyre v. State

State v. Smith, 120 Ill. App. 457, 458; Harvey v. State, 120 Ill. App. 457, 458.

A Jones Commission on Evidence (1906, page 20), states that

it is

therefore it will be presumed in view of the

unity of the abstract that there was competent evidence substantially

of the hearsay evidence to support the judgment. In the trial by

the court without a jury it will not be presumed that the court

considered hearsay evidence in reaching a decision. The State v. Smith

State v. Smith, 120 Ill. App. 457, 458.

For the reasons stated the judgment of the trial court

is affirmed.

THOMAS.

Witness, J. D. and testimony, J. D.

JAMES M. KENNEDY and O. VON
RAUTENKRANZ, Trading as LAKE
VIEW REAL ESTATE EXCHANGE,
Appellees,

vs.

CHARLES F. HENRY,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 675

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action in the Superior court of Cook County brought by James M. Kennedy and O. Van Rautenkranz, trading as the Lake View Real Estate Exchange, the plaintiffs, against Charles F. Henry, the defendant, to recover real estate commissions alleged to be due to the plaintiffs from the defendant.

The case was tried before the court without a jury; and the court entered judgment in favor of the plaintiffs in the sum of \$4950. From the judgment the defendant has prosecuted this appeal.

Briefly stated the undisputed facts are that the defendant employed the plaintiffs to negotiate an exchange of certain properties between him and John F. James; that the defendant agreed in writing to pay the plaintiffs as commissions for such service \$4950, provided that no commissions were to be paid "until deal is closed and deeds delivered unless failure to close such deal is the fault of said Charles F. Henry," the defendant; that through the efforts of the plaintiffs a written contract for the exchange of the properties was signed by the defendant and James and the wife of James; that about a week after the contract was signed the defendant refused to carry out the contract.

The defendant assigns error on the rulings of the court in regard to the pleadings. The defendant filed the plea of the

THE HON. J. H. HARRIS, JR.,
ATTORNEY AT LAW,
WITH OFFICE BUILDING,
APPEALS.

100.

CHARLES E. HARRIS,
APPEALS.

THE HON. J. H. HARRIS, JR.,

OF THE COURT.

2401 A. 678

THE HON. J. H. HARRIS, JR.,

THE HON. J. H. HARRIS, JR.,
ATTORNEY AT LAW,
WITH OFFICE BUILDING,
APPEALS.

THE HON. J. H. HARRIS, JR.,

THE HON. J. H. HARRIS, JR.,
ATTORNEY AT LAW,
WITH OFFICE BUILDING,
APPEALS.

THE HON. J. H. HARRIS, JR.,

THE HON. J. H. HARRIS, JR.,
ATTORNEY AT LAW,
WITH OFFICE BUILDING,
APPEALS.

THE HON. J. H. HARRIS, JR.,
ATTORNEY AT LAW,
WITH OFFICE BUILDING,
APPEALS.

general issue and eleven special pleas. The plaintiffs filed replications to the eleven special pleas. The objections of the defendant relate to the special pleas referred to as the second, eighth and twelfth. To the replications to these pleas the defendant filed general and special demurrers. The court overruled the demurrers of the defendant.

The substance of the second plea is that the plaintiffs, as agents for the defendant, concealed certain material facts from the defendant in regard to the property of the Janeses, which facts it was the duty of the plaintiffs to disclose to the defendant. The substance of the replication to the second plea is that the plaintiffs did not conceal such knowledge from the defendant; that the defendant was familiar with the property of the Janeses and did not rely upon any knowledge, judgment or information of the plaintiffs, but signed the contract for the exchange of the properties in the exercise of his own judgment and knowledge.

The ground of the special demurrer of the defendant to the replication to the second plea is that the allegations in the replication are immaterial and irrelevant.

In connection with the objection relating to the second plea, the defendant states that the court granted a proposition of law requested by the defendant, which is contrary to the action of the court in overruling the defendant's demurrer to the second plea. The proposition of law is as follows: "That if in the negotiations for and closing of the alleged real estate exchange contract involved in this case, the plaintiffs concealed from the defendant any information to his advantage or material to his decision in entering into such a contract, the plaintiffs are not entitled to recover in this case, even though such concealment did not result in injury to the defendant."

We fail to perceive that the defendant has any ground

General Lewis and eleven special agents. The plaintiffs filed
 negotiations in the eleven special agents. The objectives of the
 defendant relate to the special agent related to the second,
 eighth and ninth. In the negotiations to these agents the two
 tenants first general and special agents. The agent overcame
 the interests of the defendant.

The objectives of the second agent is that the agent

first, he agrees to the defendant, general agent related
 to the first the defendant in relation to the property of the house,
 which is not the help of the plaintiffs in relation to the
 defendant. The objectives of the plaintiff to the second agent is
 that the plaintiffs did not accept your knowledge from the de-
 fendant; that the defendant was related with the property of the
 house and did not rely upon any knowledge, related to infor-
 mation of the plaintiffs, but relied on the knowledge of the defendant
 the property in the interests of his own defendant and plaintiff.
 The terms of the special agent at the defendant is
 the relation to the second agent is that the objectives in the
 relation to the defendant and defendant.

In connection with the objectives related to the second
 agent, the defendant agrees that the agent created a negotiation of
 the objectives of the defendant, which is related to the second agent.
 The agent in negotiating the defendant's interests in the second agent.
 The objectives of the agent is as follows: "That it is the negotiations
 the objectives of the agent that the agent created a negotiation of
 objectives in this way, the plaintiffs created from the defendant
 any information in his knowledge or interests in his interests in
 creating late such a contract, which is related to the agent related to
 objectives in this way, even though both defendant and plaintiff
 in relation to the defendant."

We will be grateful that the defendant has any knowledge

for objection to the action of the court either in regard to the overruling of the demurrers to the second plea, or to the granting of the proposition of law requested by the defendant. We think that the court correctly overruled the demurrers; and as evidence was admitted under the second plea, the proposition of law in question indicates that the court considered the evidence according to the rule of law requested by the defendant in the proposition of law.

The substance of the eighth plea is that the plaintiffs "falsely represented" that the Jameses were owners of the property, whereas the Jameses were not the owners of the property.

The replication to the eight plea denies that the plaintiff falsely represented that the Jameses were the owners of the property.

The ground of the demurrer of the defendant to the replication to the eighth plea is that the replication admits that the Jameses were not the owners of the property.

We are of the opinion that in view of the facts that the defendant and the Jameses signed a written contract for the exchange of properties, and that the evidence does not show any fraud or misrepresentations by the plaintiff, it is immaterial, insofar as the plaintiffs are concerned, whether the Jameses were owners of the property or not. Fox v. Ryan, 240 Ill., 391; Rushkewicz v. St. George, 226 Ill. App. 310, 314; Easter v. Newbury, 170 Ill. App. 494, 496; Russell v. Hurd, 113 Ill. App. 63, 65; Springer v. Orr, 82 Ill. App., 558, 563.

In the case of Fox v. Ryan, *supra*, the court said (p. 397): "The vendor of property is not required to accept a purchaser without opportunity for investigation as to his ability to comply with the terms of the contract, but where he does accept

for objection to the action of the court either in regard to the
 execution of the decree or in the decree itself, or in the proce-
 ding to the execution of the decree by the court. It is not
 that the court merely overruled the objection; but it was
 was decided upon the record that the objection of law in
 question indicated that the court considered the evidence suffi-
 cient to the fact of law requested by the defendant in the proce-
 ding of law.

The opinion of the court in this case is that the plain-
 tiff "allegedly" requested that the decree be reversed and the
 property, which the defendant was the owner of, be restored.
 The objection to the decree was that the decree was not
 properly "allegedly" requested that the decree be reversed and the
 property.

The court of the decree in the case of the plaintiff in the
 execution of the decree is that the plaintiff was not the
 owner of the property and the decree was not the decree of the property.

We say of the objection that in view of the facts that
 the plaintiff and the defendant agreed a written contract for the
 purchase of property, and that the evidence does not show any
 fraud or misrepresentation by the plaintiff, it is immaterial,
 whether or not the plaintiff was concerned, whether the defendant was
 owner of the property or not. *See v. Smith, 200 Ill., 201;*

Smith v. Smith, 200 Ill., 201; Smith v. Smith, 200 Ill., 201;
Smith v. Smith, 200 Ill., 201; Smith v. Smith, 200 Ill., 201;
Smith v. Smith, 200 Ill., 201; Smith v. Smith, 200 Ill., 201;

In the case of *Smith v. Smith, 200 Ill., 201;*
 (a. 201); the court of the decree in the case of the plaintiff in the
 execution of the decree is that the plaintiff was not the owner of the property,
 inasmuch as the plaintiff was not the owner of the property, but there is no record

such purchaser, uninfluenced by fraud or misrepresentation, it is a determination by him of the purchaser's ability to perform his contract, and if the purchaser afterwards fails to perform it, the seller cannot defeat the broker's commissions on the ground that the purchaser was not able to buy the property. A large collection of cases are cited as so holding, in an exhaustive note to Lunney v. Hanley, 44 L. R. A., 616."

It has been expressly held that the same rule in regard to the selling of land applies as well where land is exchanged. Field v. Ingersoll, 228 Ill. App., 457, 465. We are of the opinion that the court correctly overruled the demurrers to the eighth plea.

The twelfth plea alleges in substance that the plaintiffs represented both parties, and that prior to the signing of the contract for exchange of properties, the defendant had no knowledge of and did not consent to the double agency of the plaintiffs.

The replication to the twelfth plea denies that the plaintiffs represented both parties without the knowledge or consent of the defendant; and alleges that the defendant knew that the plaintiffs were representing both parties.

The ground of the defendant's demurrer to the replication to the twelfth plea is that the replication does not allege that the defendant consented to the double agency.

We are of the opinion that the replication was sufficient.

Furthermore, we are of the opinion that the evidence clearly shows that the defendant did have knowledge that the plaintiffs were acting as the agents of the Jameses; and that the defendant impliedly consented that the plaintiffs should act as agents of the Jameses. Our conclusions are based largely on the testimony

of the defendant himself.

The evidence shows that the first connection that the plaintiffs had with the defendant in regard to the transaction in question was when their salesman, Seysour Lind, representing James, called to see the defendant in reference to an exchange of properties between the defendant and James.

The defendant was permitted to testify that before he signed the contract for the exchange of the properties he had no knowledge that the plaintiffs were acting as agents for the Jameses, and that he did not consent to such agency.

The defendant further testified that Lind stated that he had a farm and a lot which he wanted to trade for a building owned by the defendant; that the defendant told Lind that he would not be interested in the farm, but that he had a building which he might trade for the lot alone. The lot referred to is the property which is contained in the contract for the exchange of properties, subsequently entered into by the defendant and the Jameses.

After testifying to the terms of the exchange that were discussed by him and Lind, the defendant further testified that Lind said, "I will go and see James;" that subsequently Lind told him, the defendant, over the telephone, "We got James to sign the contract." The defendant also testified that Kennedy, one of the plaintiffs, and Lind told him that "James was the owner" of the property.

It will be observed that according to his own testimony the defendant knew that Lind came to him as the agent of James; that Lind took the defendant's counter proposition back to James and got James to sign the contract for the exchange of properties between the Jameses and the defendant; and that the defendant was told by Kennedy and Lind that James was the owner

of the defendant's testimony.

The evidence shows that the witness was present at the

the witness had seen the defendant in the presence of the

then in question was when the witness, William J. Lee, testified

the witness, called to see the defendant in reference to an exchange

of property between the defendant and James.

The defendant was present in fact at the time before

he signed the contract for the exchange of the property he had

no knowledge that the plaintiff was going to appear for the

exchange, and that he did not consent to such exchange.

The defendant further testified that the witness

that he had a talk with the witness in regard to the exchange

before the witness signed the contract; that the witness told him

that he would not be interested in the exchange, but that he had a

feeling that he might trade for the property, and the witness

testified that the witness told him that he was not interested in

the exchange of property, and that he was not interested in the ex-

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change of property, and that he was not interested in the ex-

of the property.

With this knowledge of the double agency of the plaintiffs, the defendant signed a written contract with the plaintiffs which recited that the defendant agreed to pay the plaintiffs \$4950 as commission for the exchange of properties between the defendant "and J. E. James and wife according to contract entered into on this date."

A further contention of counsel for the defendant is that the judgment should be reversed because the finding of the court was against the weight of the evidence.

The principal defense of the defendant, which has already been indicated, is that he was induced to sign the contract for the exchange of the properties with the Jameses by false representations of the plaintiffs.

The defendant, who was the only witness in his behalf, testified that he wanted to use the property which he would get from James for a large apartment building; that Lind and Kennedy falsely represented to him that the property was suitable for an apartment building and was zoned for apartment buildings; that they also made false representations as to the location of the property and as to the value of the property, and as to the ownership of the property.

According to the testimony on behalf of the plaintiffs, which was given by Lind and Kennedy, no such false representations were made to the defendant. Lind testified that "there really was not much to argue about;" that he told the defendant "James had met his terms;" that the defendant said to him, Lind, "By the way, do you know, is there a restriction on this vacant, is that for residential property only, or can they put up apartment buildings?" that he replied, "That can

of the property.

With this knowledge of the value of the property, the defendant signed a written contract with the plaintiff which recited that the defendant agreed to pay the plaintiff's debt on condition that the amount of property between the defendant and J. L. Jones and wife according to the contract entered into in this case.

A further condition of contract for the defendant is that the defendant should be returned between the finding of the court and against the value of the defendant.

The plaintiff claims of the defendant, which has already been indicated, is that he was induced to sign the contract for the exchange of the property with the defendant by false representations of the defendant.

The defendant, who was the only witness in this case, testified that he was the owner of the property which he would not give Jones for a large amount of money; that Jones and Kennedy falsely represented to him that the property was valuable for no reason, holding and was worth for money; that Jones and Kennedy had taken representations from him as to the value of the property and on the value of the property, and as to the location of the property.

According to the testimony in detail of the plaintiff, which was given by him and Kennedy, he says that representations were made to him by Jones and Kennedy that "there really was not much to give about"; that he told the defendant "Jones had not his father"; that the defendant was a man, and, "My son, do you know, he gave a certificate on this property, to give you residential property only, or can you not do a residential property? That he wanted, that was

easily be looked up."

We are of the opinion that the finding of the court is not manifestly against the weight of the evidence.

Counsel for the defendant further contends that the court committed reversible error in excluding certain evidence offered by the defendant.

The substance of the evidence offered was (1) that the defendant made a specialty of building apartment buildings, wanted a lot suitable for that purpose, and that the property in question was not suitable; (2) that the property was in a business neighborhood, and the street was unpaved; (3) that the property was zoned for business and not for apartment buildings; (4) that the reason that the property was not suitable for apartment buildings was that "the cost of building and the rents obtainable" made it prohibitive to build apartment buildings in that locality; (5) that it would appear from certified copies of mechanics' liens filed against the property that certain persons attempted to build a thirty-six apartment building on the property but failed, "because the location was so poor that they could not get loans, though the loan market was easy for apartment buildings on suitable locations at that time."

Counsel for the defendant does not contend that he was unable to make proof of any of his defenses, because of the exclusion of this evidence. On the contrary, he maintains that the "defendant has proved all of his twelve pleas, any one of which would be fatal to a recovery of the plaintiffs." The record shows that the defendant was allowed to testify substantially in respect of the matters contained in the defendant's offers of evidence. The defendant testified as follows: "I drove over there to look at the corner. I could not find it measured up, the street did not measure up to what they told me it was. Then I looked at

would be located by."

It was of the opinion that the finding of the door

is not necessarily against the weight of the evidence.

Conceding for the defendant's purpose that the

door was located in the vicinity of the building

located by the defendant.

The evidence of the evidence offered was (1) that

the defendant made a statement at the building

located a lot of evidence for the purpose, and that the property in

question was not located; (2) that the property was in a build-

ing neighborhood, and the witness was annoyed; (3) that the

property was located in the building and not in the apartment building;

(4) that the witness found the property was not located for as to-

ward location was that "the door of building and the rest of-

building" was in the vicinity of the building in the

location; (5) that it would appear from the evidence of

the witness, it was found against the property that certain persons

attempted to build a building in the vicinity of the prop-

erty and failed, "because the location was so poor that they could

not get located, though the land owned was easy for someone else-

to get an outside location at that time."

Conceding for the defendant does not mean that he

was unable to make proof of any of his statements, because of the

exclusion of his evidence. On the contrary, he maintains that

the "document was given all of his rights when, and one of

them would be that of a property of the defendant." The

record shows that the defendant was allowed to testify substantially

in respect of the witness concerned in the defendant's efforts of

evidence. The defendant testified as follows: "I have ever been

in fact at the moment. I would not find it necessary to, for I

the very moment up to now they tell me it was. When I looked at

the contract and I found it was a different corner. I inquired where the property was, and I drove over there. It was eight blocks from the Loyola station, near Devon and Clark streets." The defendant also testified that the property was not suitable for a high-grade apartment building; and later when counsel for the defendant made an offer to prove by the defendant that the property "was wholly unsuitable for" a high-grade apartment building, the court said "You have proved that. I will admit it was not."

It is not contended by counsel for the defendant that the matters contained in the evidence which was excluded were direct issues in the case; but counsel contends that all of this evidence which was excluded was in the nature of corroborative testimony; that it tended to prove the falsity of the representations of Kennedy and Lind; that the defendant relied on the false representations of the plaintiffs, and would not have made the exchange of properties but for such false representations.

We do not think that the exclusion of the evidence would justify us in reversing the judgment. The relevancy of the excluded evidence is too slight and remote. Furthermore, as we have shown, a substantial part of the excluded evidence was testified to by the defendant. We do not think that the admission of the evidence would have had any material influence on the result of the trial. Town of Harmony v. Clark, 250 Ill., 57, 62.

Counsel for the defendant further contend that the court erred in ruling on the propositions of law.

As we are of the opinion that the judgment of the trial court was in accordance with the law and the evidence, it is immaterial whether the court ruled correctly on the propositions of law. Commercial State Bank of Ferris v. Folkerts, 200 Ill.

the defendant and I found it was a different matter. I testified
 there was property was, and I found that there, it was not
 Alaska from the Alaska station, and I found that there, it was not
 The defendant also testified that the property was not Alaska
 for a big-geared operation and that the property was not Alaska
 the defendant made no effort to prove by the defendant that the
 property was really Alaska from a big-geared operation
 nothing, the court said that was proved that I will admit
 it was not."

It is not considered by counsel for the defendant
 that the defendant admitted in his witness - the defendant
 was already known to the court; and I found that the defendant
 this evidence which was included in the record of the
 the defendant; that it tended to prove the falsity of the
 testimony of the defendant and that; and the defendant is called on
 the false representation of the Alaska Bill, and would not have
 made the charges of property but for such false representation.
 alone.

We do not think that the explanation at the village
 would justify us in reversing the judgment. The relevancy of the
 admitted evidence is too slight and remote. Nevertheless, as we
 have shown, a substantial part of the admitted evidence was dis-
 tilled to by the defendant. We do not think that the admission
 of the evidence would have had any material influence on the re-
 sult of the trial. Ex parte Brown, 200 Ill., 27, 28.
 Counsel for the defendant further insisted that the
 court acted in ruling on the propriety of the

the court of the village was the defendant of the
 trial court was in accordance with the law and the evidence, it is
 immaterial whether the court acted properly on the propriety
 of law. Ex parte Brown, 200 Ill., 27, 28.

App., 385, 391, 392; Fuchs & Lang Mfg. Company v. R. J. Kittredge & Company, 146 Ill. App., 360, 371; Stone v. Mulvina, 119 Ill. App., 443, 456.

For the reasons stated the judgment is affirmed.

AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.

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FOR THE PRESIDENT OF THE UNIVERSITY OF CHICAGO

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DAISY H. HARTS,
Appellant,

vs.

ARNOLD BROTHERS, a
Corporation,
Appellee.

5083
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 675

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action in the Municipal court of Chicago brought by Daisy H. Harts, plaintiff, to recover solicitor's fees incurred by the plaintiff in prosecuting a suit in equity against the defendant to recover damages for waste alleged to have been committed by the defendant in making alterations on premises leased to the defendant by the plaintiff. The suit in equity was begun before the expiration of the lease.

The hearing in the Municipal court in the action for solicitor's fees was had before the court without a jury. The lease provided that the lessee should pay all costs, attorney's fees and expenses that should arise from enforcing the covenants of the lease by the lessor. The lease also provided as follows: "The lessee having made alterations in said premises during its present tenure thereof, agrees to restore the said premises at the termination of the lease to their original condition as required, less reasonable wear and tear." The court found in favor of the defendant. From the judgment of the court on the finding the plaintiff has prosecuted the present appeal.

After the action was begun in the Municipal court the suit in equity, which had been brought by the plaintiff to recover damages for the alleged acts of waste, was appealed to the Supreme court. On the appeal (Harts v. Arnold Brothers, 318 Ill.. 416. 419. Advance Sheets) the Supreme court decided that

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111... 110. (Various Dates) The following were handled and
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However, because for the above case of work, was reported as
the one is equal, which has been brought by the difficulty to
after the action was taken in the original case.

according to the terms of the lease the parties recognized the right of the defendant Arnold Brothers "to make changes on condition that the defendant restore the premises at the close of the tenancy;" that in such a situation the plaintiff was not "entitled to recover during the term of the tenancy for any damages except that resulting to the reversion;" and that "no evidence appears to have been offered of injury to the reversion by reason of the alterations complained of."

In view of the decision of the Supreme court we are of the opinion that the plaintiff is not entitled to recover solicitor's fees.

The judgment of the Municipal court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

IDA REEVES,
Appellant,

vs.

CHICAGO MUTUAL LIFE COMPANY,
a Corporation,
Appellee.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

240 I.A. 676

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action in the Municipal court of Chicago brought by Ida Reeves, the plaintiff, against the Chicago Mutual Life Company, the defendant, to recover \$1000 as beneficiary under an insurance policy issued by the defendant on the life of her husband, William H. Reeves, deceased.

The statement of claim, as set out in the abstract of the defendant, is as follows:

"That defendant owes plaintiff \$1000 for reasons following: that on the 28th of November, 1923, it issued and delivered to William H. Reeves their policy No. 3211, copy of which is attached; that pursuant to said policy, premium of \$12.30 became due on the 28th of February, 28th of May, 28th of August, and 28th of November of each year; that policy was sold by one A. V. Langworthy at Grand Haven, Michigan; that said Langworthy was then General Agent of the Company and continued to be during all times mentioned in Statement of Claim; that neither plaintiff nor insured ever had notice of any termination of his authority; that plaintiff is the beneficiary in policy; that on the 28th of May, 1924, a premium became due; that on that day the insured was injured from which injury he died on the 15th of July, 1924; that on the 5th of July, there was forwarded to said Langworthy the said premium by means of a United States Postal Money Order made out to the Chicago Mutual Life Company; that the delay in forwarding was due to the excitement attendant upon insured's injuries; that on the 6th of July said Langworthy received said money order; that when he so received it, he knew and because of his knowledge, the defendant knew of insured's injury; that defendant knew the conditions in the said policy in re 'grace' in payment of premiums and the matter of 'complete default'; that it through said Langworthy accepted said money order without qualification or condition as indicated by a letter received from said Langworthy, copy of which is attached, marked Exhibit 'B'; that said letter read among other expressions:

'Grand Haven, Michigan,
July 9, 1924.

Dear Mrs. Reeves:

Money received O. K. on Mr. Reeves' premium.

(Signed) A. V. Langworthy.'

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"That neither the insured nor plaintiff remembered the exact due date or the days of grace and when the premium was forwarded, on to-wit, July 8, 1924, the plaintiff and insured believed the policy in full force; that the remittance was made in good faith and was as aforesaid accepted without reservation or qualification; that the company through its own conduct and the acts, conducts and declarations of its general agent waived all conditions in said policy in re days of grace and in re 'complete default' and reinstatement thereunder; that the said Company through its agent accepted said money with full and complete knowledge of the forfeiture, if any, and is estopped from claiming a forfeiture; that notice of death within thirty (30) days was given the defendant; that within six months of the death proofs thereof were submitted to defendant; that demand was made of the defendant to pay the \$1,000 and that it refused so to do; therefore, plaintiff sues."

Attached to the statement of claim is the following affidavit:

"Ida Reeves, being sworn, says she is plaintiff and knows the facts; that the cause is a suit upon contract for the payment of money; that the nature of the demand is as stated in Statement of Claim and that there is due from the defendant \$1000."

The defendant filed an affidavit of merits, which as set out in the abstract is as follows:

"Harry C. Richards takes oath and says he is Secretary of the defendant, and admits that on November 23, 1923, it issued policy to William H. Reeves as alleged in Statement of Claim, the premiums becoming due as therein stated; that on the 28th day of May, 1924, premium became due and that it was not paid nor was it paid within thirty days, nor was it ever paid to the defendant; defendant does not know except from Statement of Claim whether Reeves was injured as stated or whether \$12.30 was forwarded to Langworthy as stated. Defendant denies that Langworthy on the 5th of July, 1924, or at any time before or since was the General Agent of this defendant; alleges that Langworthy was a mere soliciting agent at one time long prior to said 5th day of July, 1924. As such he solicited and obtained applications for policies of insurance, but that he had no authority nor was any delegated and as far as defendant is advised, Langworthy did not hold himself out to the public to have authority to waive any of the provisions of the insurance policies issued by defendant. That if Langworthy received such remittance, he never forwarded same to defendant and defendant never received payment thereof as required by the terms of the policy. Stated on information and belief the fact to be that Langworthy did receive such remittance of \$12.30 from Reeves during his lifetime and after complete default of said policy No. 3211, according to the terms thereof for failure to pay the premium due on the 28th of May, 1924; but he held same pending submission of proof by said Reeves of his insurability satisfactory to the officers of the company, but without knowledge, consent or authority of defendant, and that at that time defendant had no notice or knowledge that Reeves had suffered any injury nor did Langworthy have notice or knowledge of the seriousness of the injury. Alleges that insured fraudulently and in bad

faith failed to disclose to Langwerthy the seriousness of the injuries; that it was plaintiff's duty and of insured to have disclosed said facts and to submit to re-examination as well as to make past due payments. That plaintiff fraudulently conspired with insured to conceal the true facts in an attempt to work an implied waiver by acceptance of payment of past due premiums, but which past due premiums were never accepted; denies that any proofs of insurability of said Reeves were submitted to the officers of defendant company and that said policy was never recognized nor an application for such purpose ever made. Denies that payment of the May 28, 1924, premium was paid to or accepted by the defendant, and denies that through any conduct of it or of its authorized agent, it waived the conditions relative to days of grace and complete default and reinstatement, and denies that Langwerthy had any authority to waive any such provisions, and denies owing plaintiff anything."

The case was heard before the court without a jury and the court entered judgment in favor of the defendant. From the judgment the plaintiff has prosecuted this appeal.

It will be observed that on the pleadings the precise issue is whether the payment of the premium of \$12.30 to Langwerthy on July 5, 1924, after the plaintiff was in "complete default," constituted an acceptance of the premium by the defendant, and a waiver of the default such as to estop the defendant from claiming that the policy of insurance was forfeited by the plaintiff.

In the brief of counsel for the plaintiff, however, additional issues are raised and argued. Counsel for the plaintiff contends that the insured was not in default when the premium of July 5, 1924, was paid; that the policy of insurance did not contain a provision "for an automatic lapse upon non-payment of premium;" that therefore it became necessary for the defendant "to declare a forfeiture;" that "the mere declaration of a forfeiture would not avail the defendant unless" the defendant "could show that it had brought home to the knowledge of the insured" during his lifetime that the defendant "had forfeited his policy" and had "declared and elected to treat the insurance policy as cancelled;" that the defendant did not do any of these things and that consequently the policy of insurance remained in force and there was no default on

July 5, 1924; that furthermore the policy of insurance provided that 'credit balances' might be established "in favor of the insured," and that "any credit balance" might be applied to cover premiums and thus prevent forfeitures; that the insured gave Langworthy a note which paid for more than six months insurance; that "the record is silent as to how much more than six months insurance" the note "paid for" and is also "silent as to how much, if any, credit balance stood on the books of the company in favor of the insured;" that also on "July 7 or 8, 1924, when Langworthy received the July 5, 1924, remittance, the days of grace on the May 26, 1924, premium were just seven days gone;" that "bearing all these things in mind ** the record will not disclose affirmatively that (taking into consideration the credit balance, if any, the over plus of premium contemplated by the note) the policy of the insured was at the time of the remittance July 5 or 6, 1924, in default." "Such is this case" say counsel for the plaintiff, "aside from the question of waiver and estoppel."

Counsel for the defendant contend that on the pleadings it is not permissible for the plaintiff to raise the questions in regard to forfeiture and credit balances; that if issues had been made in these respects on the pleadings, the defendant might have proved that notice of default was given, and that there was no credit balance which would carry the premium beyond the end of the second quarter; that according to the elementary principles of pleading, as announced in the case of Feder v. Midland Casualty Company, 316 Ill., 552, 553, 559, a plaintiff can recover only on the case made in his declaration; that he cannot make one case by the allegations in his declaration, and recover on a different case made by the proof.

Counsel for the plaintiff maintain that the rule announced in the case of Fader v. Midland Casualty Company, supra, applies only to common law pleadings and not to pleadings in the Municipal court. Counsel are in error.

It has been expressly held that the rule applies to pleadings in the Municipal court. Walter Cabinet Company v. Russell, 250 Ill., 446; Gillman v. Chicago Ry. Company, 268 Ill. 305, 310; Butten v. Chicago Ry. Company, 174 Ill. App. 316, 318; Donaldson v. Wellington Hotel Company, 175 Ill. App. 623, 625; Guerra v. Recco, 181 Ill. App. 528, 529; Ishitz v. Chicago City Ry. Company, 192 Ill. App. 487, 495.

In the case of Walter Cabinet Company v. Russell, supra, the court said (pp. 420, 421):

"The object of the rules requiring statements of claim and of set-off is to inform the parties of the nature of the respective claims, and while the formalities of pleading have been abolished by statute, it is still the law in the municipal court, as in other courts, that a party is limited, in his evidence, to the claim he has made; that he cannot make one claim in his statement and recover upon proof of another without amendment. The issue is made by the statement of claim, and the evidence must be limited by that statement. The issue can not be enlarged by oral claims or affidavits filed in the case."

The only questions which we think we should consider in the case at bar are those raised by the pleadings in regard to waiver and estoppel. In our view of the case for the sake of argument it may be assumed, in determining those questions, that Langworthy was the general agent of the defendant, and that the payment to him of the premium of \$12.30 on July 5, 1924, was equivalent to a payment to the defendant.

On May 28, 1924, the insured, who was a decorator, fell from a scaffold while painting a house and broke his back. He was taken to a hospital where he remained two weeks and was then taken to his home. As a result of the accident he was paralyzed from the hips down, and on July 5, 1924, he died. The plaintiff testified that the doctors gave her hope at first that

Excluded from the plaintiff's complaint is the fact that the plaintiff is a corporation and not an individual, and that the plaintiff is a corporation and not an individual, and that the plaintiff is a corporation and not an individual.

It has been repeatedly held that the plaintiff is a corporation and not an individual, and that the plaintiff is a corporation and not an individual, and that the plaintiff is a corporation and not an individual.

In the case of Wright v. Wright, 100 Cal. 487, 488.

Wright, 100 Cal. 487, 488.

The object of the writ is to prevent the plaintiff from obtaining the benefit of the writ. It is not the object of the writ to prevent the plaintiff from obtaining the benefit of the writ. It is not the object of the writ to prevent the plaintiff from obtaining the benefit of the writ.

The only remedy which the plaintiff is entitled to is a writ of habeas corpus.

In the case of Wright v. Wright, 100 Cal. 487, 488, the plaintiff is entitled to a writ of habeas corpus. In the case of Wright v. Wright, 100 Cal. 487, 488, the plaintiff is entitled to a writ of habeas corpus.

On May 23, 1901, the plaintiff, who was a defendant,

filed a motion for a writ of habeas corpus. The motion was granted, and the plaintiff was released from custody. The motion was granted, and the plaintiff was released from custody.

her husband "would get up;" that they gave her hope for more than two weeks after he was injured; that the doctors thought that his spine was not totally broken and nature would adjust it, and that he would live but would be permanently crippled; that she did not cease to have hope for his recovery "up until the last week of his life."

On July 5, 1924, the plaintiff wrote the following letter to Langworthy, at Grand Haven, Michigan:

"Enclosed find \$12.30 the premium due on Wm. H. Reeves insurance. Russell and I will send ours very shortly. I don't know just when they are due and have moved so thought I would send Mr. Reeves now and let you know the address. Mr. Reeves met with an accident a few weeks ago and is still confined to his bed but we are hoping to have him about before long."

On July 9, 1924, Langworthy wrote a letter to the plaintiff in reply, in which he stated: "Money received O. K. on Mr. Reeves premium." In the letter he also said: "I was just informed by the cashier of Peoples Bank here they were about to start action to collect the money they loaned you when I delivered your policies last fall, I endorsed your note and now they inform me you defaulted in your note, so I must pay it for you. Mrs. Reeves, I wish you would at least pay the interest and renew the note, thus save me a burden, as I have all I can do to take care of my family of three. Mr. Hoffman tells me you folks are alright as for credit and cannot understand why you do not do something about these notes, please let me hear from you by return mail before your note affair goes to court. Next Monday is a meeting of the directors of the bank and if you can get me a letter before or on that day as to what you intend to do, I'll take it up with the bank and try to settle the matter out of court. Please answer this immediately and I will thank you very much."

The night that Reeves died, namely, July 15, 1924, the plaintiff notified Langworthy of his death by a telegram.

her husband would not say that they were not from the same
the reason that he was injured; that the doctor's report was
his father was not totally paralyzed and nature would adjust it, and
that he would live but would be permanently disabled; that the
it was never in his mind for his recovery, and until the last
week of his life.

On July 8, 1904, the following letter was received from
Jesse W. Thompson, of Great Falls, Minnesota:
"I received your letter of the 2nd inst. and am glad to hear
from you. I am well and hope you are the same. I have
not heard from you for some time and am sorry to hear
that you are not well. I hope you will soon be able to
write me again. I am your friend, Jesse W. Thompson."

On July 9, 1904, the following letter was received from
Jesse W. Thompson, of Great Falls, Minnesota:
"I received your letter of the 2nd inst. and am glad to hear
from you. I am well and hope you are the same. I have
not heard from you for some time and am sorry to hear
that you are not well. I hope you will soon be able to
write me again. I am your friend, Jesse W. Thompson."

July 16, 1924, Langworthy wrote to the plaintiff as

follows:

"I was very sorry to receive your wire advising me of the death of Mr. Reeves, your letter of a few days ago did not intimate that the accident was at all serious. Aside from it being a very great shock to me I feel very badly the circumstances that make it necessary for me to return the amount of money sent me under date of July 5, 1924. You will see by the date of his insurance policy that the last day of grace for payment of his premium was June 29, 1924. And in order for him to be reinstated he would have to fill out an application for reinstatement and same would have to be passed on by officers of the company. I cannot tell you how bad I feel about this but there is nothing I can do as your policy states method of reinstatement in case a policy holder does not pay premium when due or during grace period. If I can be of any assistance, do not fail to call on me. I advised the paper of Mr. Reeves death. Again extending sympathy to the entire family I remain."

The books of the defendant showed that the policy of insurance was forfeited on February 28, 1924, for non-payment of the second quarterly premium.

In the insurance policy a paragraph marked "Reinstatements" provided as follows:

"In the event of complete default, this policy may be reinstated any time upon proof of the insurability of the insured satisfactory to the officers of the Company and upon the payment of all past due premiums remaining unpaid with interest at the rate of 6% per annum."

The evidence does not show that proof was made of the insurability of Reeves under the above paragraph.

It is the contention of counsel for the plaintiff "that Langworthy, on behalf of the company, immediately accepted the remittance of July 5, 1924, without reservation and with knowledge that the insured was injured; that he thereby, for the company, waived the time of the payment of the premium and waived proof of insurability on the part of the insured."

Counsel for the defendant maintain that there was no waiver by the defendant; and furthermore they assert that the defendant is not estopped to claim the forfeiture of the policy as "in reality Reeves lost nothing by going to his death with the conviction that the policy was in full force and effect;" that Reeves

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To claim our full share of the future, we must do this:

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(The meeting was adjourned.)

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1. The first of these is the fact that the Commission has not yet received any information from the Government of the United Kingdom regarding the proposed amendments to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which were adopted by the General Assembly of the United Nations in December 1979.

... ..

10-17-71 to wife and value agreed to \$1100.00.

1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 26

[illegible]

THE UNIVERSITY OF CHICAGO PRESS

... advised the time of the payment of the premium was advised ... that he thereby, for the ...

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the results of its investigation of the activities of the American Friends Service Committee in the Philippines.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

NOTES OF THE EDITORIAL BOARD

as well as to the other side of the mountain.

IN 1951, THE U.S. GOVERNMENT PRINTING OFFICE: 16-50811-1

"was on his deathbed when it was sought to revive the policy by making the past due payment, and even if at once notified of the refusal of the company to reinstate he could not have obtained insurance elsewhere; that estoppel is based upon the fact of a loss which might have been recouped except for the misleading conduct of the party so estopped."

We are of the opinion that the question in the case at bar is not one strictly of estoppel in the sense that plaintiff must show that Reeves was misled to his prejudice, or that his position was disadvantageously altered by the conduct of the defendant. In our view, although there are some elements of estoppel involved, the question is one of waiver; that is, whether the defendant voluntarily and knowingly surrendered a right which the defendant was entitled to exercise according to the provisions of the policy of insurance, and thereby became estopped from claiming that the policy was forfeited.

The distinction between waiver and estoppel is most excellently stated in the Encyclopaedia of Law and Procedure, as follows (vol. 40, pp. 255, 258):

"While waiver belongs to the family of estoppel, and the doctrine of estoppel lies at the foundation of the law of waiver, they are nevertheless distinguishable terms. It is difficult to make a distinction between waiver and estoppel which will give to each a clear legal significance and scope, separate from and independent of the other, as they are frequently used in the cases as convertible terms, especially as applied to the law of insurance contracts and in the avoidance of forfeitures. There are, however, several essential differences between the two doctrines. Waiver is the voluntary surrender of a right; estoppel is the inhibition to assert it from the mischief that has followed. Waiver involves both knowledge and intention; an estoppel may arise where there is no intent to mislead; waiver depends upon what one himself intends to do; estoppel depends rather upon what he caused his adversary to do; waiver involves the acts and conduct of only one of the parties; estoppel involves the conduct of both. A waiver does not necessarily imply that one has been misled to his prejudice or into an altered position, an estoppel always involves this element. Estoppel results from an act which may operate to the injury of the other party; waiver may affect the opposite party beneficially. Estoppel may carry the implication of fraud; waiver does not. Estoppel may arise

that no one should be allowed to receive the benefit of the law unless he has first been found guilty of a crime. This is the principle of justice, and it is the principle which the law should follow. It is the principle which the law should follow, and it is the principle which the law should follow.

It is the principle which the law should follow, and it is the principle which the law should follow. It is the principle which the law should follow, and it is the principle which the law should follow. It is the principle which the law should follow, and it is the principle which the law should follow. It is the principle which the law should follow, and it is the principle which the law should follow.

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as between consistent remedies, for waiver by election to operate as a bar, the remedies must be inconsistent. A waiver may be created by acts, conduct, or declarations insufficient to create a technical estoppel. The most general distinction lies in the fact that the term 'waiver,' besides implying an intention on the part of a party to relinquish a right which is not necessarily present in estoppel, refers only to the act or consequence of the act of the party against whom the waiver is sought to be enforced, regardless of the attitude assumed by the other party, whereas estoppel arises where, by the fault of one party, another has been induced, ignorantly or innocently, to change his position for the worse in such manner that it would operate as a virtual fraud upon him to allow the party by whom he has been misled to assert the right in controversy. The distinction is more easily preserved in dealing only with express waiver, but where the waiver relied upon is constructive, or merely implied from the conduct of a party, irrespective of what his actual intention may have been, it is at least questionable if there are not present some of the elements of estoppel."

To the same effect substantially is 27 Ruling Case

Law, section 2, pp. 904, 905:

"According to the generally accepted definition a waiver is the intentional relinquishment of a known right. It is a voluntary act, and implies an election by the party to dispense with something of value, or to forego some advantage which he might at his option have demanded and insisted on. The terms 'estoppel' and 'waiver' are sometimes loosely used interchangeably, but though a waiver may be in the nature of an estoppel and maintained on similar principles, they are not convertible terms, and the distinction between them is one easy to preserve when express waivers are under consideration. As already seen, a waiver is an intentional relinquishment, while the indispensable elements of an estoppel are ignorance of the party who invokes the estoppel, a representation by the party estopped which misleads, and an innocent and deleterious change of position in reliance on that representation. It is, however, unquestionably true that the dividing line between waivers implied from conduct and estoppels often times becomes so shadowy that in the law of insurance the two terms have come to be quite commonly used interchangeably. When the term waiver is so used, however, the elements of an estoppel always invariably appear, and it is quite apparent that it is employed to designate, not a pure waiver but one which has come into an existence of effectiveness through the application of the principles underlying estoppels."

It is the rule that a waiver is not to be inferred from an act done under a misapprehension of the rights of the parties at the time. Miller v. Union Central Life Insurance Company, 110 Ill., 102, 107; Seaback v. Metropolitan Life Insurance Company, 274 Ill., 516, 520.

There can be no waiver unless the waiver is distinctly made with full knowledge of the rights intended to be waived.

Ferraro v. Knights of Security, 309 Ill., 476, 481; 27 Ruling Case Law, section 5, pp. 908, 909; 40 Cyclopaedia of Law and Procedure, pp. 258, 259.

The question of waiver is mainly a question of intent which lies at the foundation of the doctrine. Waiver must be manifested in some unequivocal manner, and must always be intentional. Since intent is an operation of the mind, intent should be proved and found as a fact, and is rarely to be inferred as a matter of law. 40 Cyclopaedia of Law and Procedure, pp. 261, 262, 263. The burden of proof rests upon the party claiming the waiver. Ferraro v. Knights of Security, *supra*, (p. 481); Seaback v. Metropolitan Life Insurance Company, 274 Ill., *supra*. The waiver must be clearly proved. 27 Ruling Case Law, section 6, p. 910; 40 Cyclopaedia of Law and Procedure, p. 269.

In the case at bar the evidence shows that the defendant did not have full knowledge of the physical condition of Reeves when the payment of the premium of July 5, 1924, was made. On the contrary, the only knowledge that the defendant had at that time in regard to the accident and injuries of Reeves was the information obtained from the plaintiff's letter to Langworthy, in which the plaintiff stated that Reeves "met with an accident a few weeks ago and is still confined to his bed, but we are hoping to have him out before long." Langworthy was not informed by the plaintiff that Reeves' back was broken and that he was paralyzed from the hips down, although the plaintiff knew these facts. From July 5, 1924, the date of the plaintiff's letter to Langworthy, to July 15, the date of the plaintiff's telegram notifying Langworthy of the death of Reeves, Langworthy had received no information of the condition

of Reeves; and from the information contained in the plaintiff's letter of July 5, 1924, Langworthy reasonably would have inferred that Reeves' condition was not serious. Immediately upon receipt of the telegram notifying him of Reeves' death, Langworthy returned to the plaintiff the amount of the premium which the plaintiff had sent to him in the letter of July 5, 1924.

Assuming, for the sake of argument, as we have assumed, that the payment of the premium sent by the plaintiff on July 5, 1924, to Langworthy, was a payment to the defendant, nevertheless we are of the opinion that in the circumstances the temporary retention of the premium by Langworthy was not such an acceptance of the premium as to constitute a waiver by the defendant of the provision in the policy of insurance relating to reinstatements after default in the payment of premiums.

For the reasons stated the judgment of the trial court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

of Devere, and from the information contained in the plaintiff's
 letter of July 7, 1934, defendant necessarily would have in-
 formed that Devere's conduct was not serious. Immediately
 upon receipt of the telephone notifying him of Devere's arrest,
 defendant returned to the vicinity the subject of the action
 within the plaintiff was sent to him in the letter of July 8,
 1934.

Accordingly, for the sake of argument, as we have
 assumed, that the payment of the balance due by the plaintiff
 on July 8, 1934, to defendant, was a payment in the ordinary
 course of business we are of the opinion that as the circumstances the
 temporary retention of the property by defendant was not such as
 to constitute an interference with the plaintiff's right to the re-
 turn of the property in the policy of insurance relating to
 the same. The plaintiff's claim in the payment of the balance
 due is dismissed.

WITNESSES:

Defendant, J. V. and Elizabeth, J. Devere.

MARK LEVY and ARTHUR G. LEVY,
Co-partners Doing Business
as Mark Levy & Brother,
Appellees,

vs.

ETHEL F. LIPSEY and DAVID LIPSEY,
Appellants.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

240 I.A. 676

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action brought in the Circuit court of Cook County by Mark Levy and Arthur G. Levy, jointly, as co-partners, doing business as Mark Levy & Brother, against Ethel F. Lipsey and David Lipsey, to recover the sum of \$6000 alleged to be due ^{them} from the defendants. The case was tried before a jury and the jury returned a verdict in favor of the plaintiffs in the sum of \$6000.

The court entered judgment on the verdict. From the judgment the defendants have prosecuted this appeal.

The evidence shows without dispute that David Lipsey signed a written contract giving the plaintiffs the exclusive agency for six months to sell certain properties, among which was the property in question. This property was in the name of Lipsey's wife, the defendant, Ethel F. Lipsey. After about three months effort on the part of the plaintiffs to sell the property, during which time they were in almost daily communication with Lipsey through their salesman, Edwin M. Wolfe, the plaintiffs procured as prospective purchasers Richard M. Harvey and Clarence A. Dammarell, partners in the hotel business. Lipsey, his attorney, Samuel B. Epstein, Harvey, Dammarell, Wolfe, and Mark Levy met in the office of the plaintiffs to negotiate in regard to the terms of the sale. A contract for the sale of the property

WILLIAM L. LARRY AND ARTHUR W. LARRY
CO-OWNERS BEING LOANED
AS PART OF A PROGRAM
APPROVED

10.

WILLIAM L. LARRY AND ARTHUR W. LARRY
APPROVED

2401 A. 1048

THE JUDICIAL INVESTIGATION REVEALED THE CRIMINAL RECORD OF THE COURT.

There is no action brought in the district court of

North Carolina by William L. Larry and Arthur W. Larry, as co-

owners, doing business as William L. Larry and Arthur W. Larry, against William L.

Larry and Arthur W. Larry, to recover the sum of \$1000.00 alleged to

be due from the defendants. The case was tried before a jury

and the jury returned a verdict in favor of the plaintiffs in the

sum of \$1000.00.

The court entered judgment on the verdict. From the

judgment the defendants have presented this appeal.

The evidence shows without dispute that William L. Larry

alleged a written contract giving the plaintiffs the exclusive

right for his term as well as certain royalties, which when was

the property in question. This property was in the name of the

plaintiffs, the defendants, William L. Larry. After about three

months expired on the part of the plaintiffs to sell the property,

during which time they were in almost daily communication with

plaintiffs through their salesman, Edwin A. Wells, the plaintiffs

procured an exclusive agreement with Richard W. Larry and Clarence

A. Townsend, partners in the hotel business. Plaintiff, who at

first, caused E. Wells, Larry, Townsend, Wells, and Mark

Wells to be in the office of the plaintiffs to negotiate in regard

to the sale of the hotel. A contract for the sale of the property

was prepared by Epstein. According to the terms of the contract the purchase price was \$320,000, of which \$50,000 was to be paid in cash, and the commission of the plaintiffs was fixed at \$6600. All of the parties then went to the home of Lipsey to get Mrs. Lipsey to sign the contract.

The evidence in respect of what took place at Lipsey's home is conflicting. The substance of the testimony given on behalf of the plaintiffs by Harvey, Dammarell, Mark Levy and Wolfe was that Mrs. Lipsey insisted on a larger cash payment; that the cash payment was increased from \$50,000 to \$60,000; that Lipsey and Mrs. Lipsey considered the plaintiffs' commission of \$6600 too high; that the commission was reduced to \$6000; that Epstein made these changes in his own handwriting in the contract, which he had prepared in the plaintiffs' office; that Mrs. Lipsey requested that the contract be typewritten in accordance with the changes that had been made, and that it be brought to her the next day at one o'clock and she would sign it.

The testimony of Epstein, who was a witness for the plaintiffs, was substantially the same as the testimony of the above named witnesses for the plaintiffs, with the exception that Epstein did not recall any conversation regarding the commission.

The contract was typewritten and on the day following the negotiations at Lipsey's home was taken back to Lipsey's home at the time agreed on for Mrs. Lipsey to sign. In the meantime Mrs. Lipsey had gone to a hospital for the purpose of her confinement and had given birth to a child. Mrs. Lipsey refused to sign the contract. Lipsey, her husband, had previously signed the contract. Harvey and Dammarell gave two checks to the plaintiffs of \$5000 each, drawn to the order of Mrs. Lipsey, as earnest money.

The only witnesses on behalf of the defendants were the defendants themselves. In regard to the negotiations at Lipsey's

home they testified in substance that the plaintiffs were trying to induce Mrs. Lipsey to sign the contract but that she refused, and did not agree to sign it either the next day or at any time; that nothing was said about reducing the commission of the plaintiffs from \$6600 to \$6000; that Mrs. Lipsey was sick and went to the hospital that night.

The principal grounds on which the defendants rely for reversal are that the plaintiffs failed to prove that Arthur G. Levy, one of the plaintiffs and the partner of Mark Levy, had a State real estate broker's license; that under the State statute making it unlawful for a real estate broker to engage in business without a license, the broker's contract between the plaintiffs and the defendants was void as to Arthur G. Levy; that therefore the joint action of the plaintiffs cannot be maintained.

In our opinion a sufficient answer to the contentions of counsel for the defendants is that the question whether Arthur G. Levy had a State broker's license was not an issue.

The plaintiffs alleged in their declaration that they were duly licensed brokers. The defendants pleaded the general issue and filed an affidavit of merits. The affidavit of merits did not deny the allegation of the plaintiffs that they were licensed brokers, but placed the defense of the defendants on other grounds.

The rule is well settled that a defendant can prove only such defense as is stated in his affidavit of merits. Hunziker v. Mulcahey, 215 Ill. App. 508, 511; Reddick v. Looney, 208 Ill. App. 413, 416, 417; Miller v. Thomas, 200 Ill. App. 125, 129, 130.

Under the general rule of pleading in actions at law, everything which is not denied is by implication admitted to be true. Hopkins et al. v. Medley et al., 97 Ill. 402, 415; Simmons v. Jenkins, 60 Ill. 479, 482; Lettick v. Honnold, 63 Ill. 335, 336; Waggoner v. Lombard, 56 Ill. 42, 43.

from any possible in substance that the plaintiff's were trying
to induce the jury to think the contract had been renewed,
and the jury were to think it either the best or the worst;
that opinion was also about regarding the consideration of the
plaintiff's from 1880 to 1885; that the jury was also and
went to the house that night.

The principal grounds on which the defendants rely
for reversal are that the plaintiff failed to prove that Arthur
G. Levy, one of the executives and the partner of Karl Levy, had
a valid contract with the plaintiff's license; that under the terms
of the contract it was intended for a real estate broker or agent in
business without a license, the contract was void as to Arthur G. Levy; that
therefore the joint action as the plaintiff cannot be maintained.
In our opinion a sufficient answer to the allegations
of counsel for the defendants is that the question whether the
Levy had a valid contract's license was not an issue.

The plaintiff's relied in their declaration that they
were only business partners. The defendants alleged the contrary and
the jury found in favor of the plaintiff. The plaintiff's of course did
not deny the allegations of the plaintiff that they were business
partners, but alleged the falsity of the defendant's other statements.
The jury in their verdict found a defendant can prove
only truth between as is stated in his affidavit of denial. Barrett
v. Wolfe, 111 Ill. App. 404, 411; Barrett v. Barrett, 100 Ill. App.
415, 416, 417; Allen v. Tamm, 200 Ill. App. 127, 128, 129.
Under the general rule of pleading in actions to law,
everything which is not denied is by implication admitted to be
true. Boyd v. Boyd, 111 Ill. App. 404, 410; Boyd
v. Boyd, 111 Ill. App. 404, 410; Boyd v. Boyd, 111 Ill.
404, 405; Boyd v. Boyd, 111 Ill. App. 404, 405.

Counsel for the defendants contend that the allegation in the declaration ^{of} the plaintiffs that the plaintiffs were duly licensed brokers, is a conclusion of law and cannot be considered as properly pleading that the plaintiffs had a license; that, therefore, the declaration does not state a cause of action.

In our opinion the allegation in question is a conclusion of fact, or, in other words, an ultimate fact, and constitutes proper pleading.

It has been expressly held that an ultimate fact is a conclusion of fact. Brown v. City of Aurora, 109 Ill. 165, 167; Caywood v. Farrell, 175 Ill. 480, 482; Laughlin v. Herten, 267 Ill. 476, 484.

And the general rule is that only ultimate facts should be pleaded. 21 Ruling Case Law, section 3, p. 438.

Counsel for the defendants further assign error in regard to the instructions.

The instructions objected to are not set out in the brief. The rule is that the proper way to present instructions for consideration on review is to set them out in full in the brief. General Platers Supply Company v. Charles F. L. L'Hommedieu & Sons Company, 228 Ill. App. 201, 206. However, we have examined the instructions and we are of the opinion that no reversible error was committed by the court in the giving or the refusing of the instructions.

We do not think the verdict of the jury should be disturbed. It is the rule that "it is the most important function of the jury and their most peculiar province to determine the truth of the case." The People v. Roucher, 303 Ill. 375, 380, 381.

AFFIRMED.

Katchett, P. J., and McSurely, J., concur.

...the fact that the plaintiff was not only
 in the fact that the plaintiff was not only
 licensed plaintiff, is a violation of the law and should be considered
 as properly showing that the plaintiff had a license; that,
 therefore, the defendant has not made a proper defense.
 In my opinion the defendant is liable in a sum of
 \$100, or, in other words, the plaintiff has, and continues
 to have, a license.

It has been suggested that the plaintiff has a
 license of fact. People v. City of New York, 100 N.Y. 100, 101;
People v. City of New York, 100 N.Y. 100, 101; People v. City of New York, 100 N.Y. 100, 101.

And the defendant has (and only defendant) a license
 to license. People v. City of New York, 100 N.Y. 100, 101.
 Defendant has the defendant's license under the
 law to the defendant.

The defendant's objection is not set out in the
 brief. The fact is that the proper way to remove a license from
 a defendant is to set out in the brief.
People v. City of New York, 100 N.Y. 100, 101; People v. City of New York, 100 N.Y. 100, 101; People v. City of New York, 100 N.Y. 100, 101.
 However, we have removed the
 license and we are of the opinion that no reversible error was
 committed by the court in not giving or not removing of the license
 from.

We do not think the verdict of the jury should be dis-
 turbed. It is the fact that it is the most important question of
 the law and that the plaintiff has a license to license the defendant
 of the case. People v. City of New York, 100 N.Y. 100, 101; People v. City of New York, 100 N.Y. 100, 101.

People v. City of New York, 100 N.Y. 100, 101; People v. City of New York, 100 N.Y. 100, 101.

241 - 30094

ABRAHAM GLYMAN,
Appellee,

v.

ASHER R. GLUCK,
Appellant.

5786a
240 I.A. 676
APPEAL FROM

COUNTY COURT,

COOK COUNTY.

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by Asher R. Gluck, the defendant, from a judgment of the County Court of Cook County, on a verdict of a jury for \$1000 in favor of Abraham Glyman, the plaintiff, in an action brought by the plaintiff to recover commissions for procuring a purchaser named Henry F. Knipp, alleged to have been ready, able and willing to buy certain property owned by the defendant.

The principal ground on which the defendant asks for a reversal is that Knipp did not comply with the agreement in regard to a deposit or "earnest money."

The evidence shows that the defendant and Knipp had agreed upon the terms of the sale, and had met together with Glyman in the office of Edward C. Delan, the attorney for the defendant, to complete the details of the sale. It was agreed at this meeting that the attorney should prepare a contract for the sale of the property and that the parties to the contract should meet in the attorney's office the next day to sign the contract. The defendant called at the attorney's office the next day and told the attorney not to do anything further until the attorney heard from him; and the attorney notified Knipp that it would not be necessary for Knipp to come down to his office as the defendant "had called the deal off."

870 A.I.A. 670

COURT HOUSE,
COOK COUNTY.

Attorney General,
Chicago, Ill.

ALLEN A. BURCH,
Applicant.

RE. JUDICIAL COLLECTION BETWEEN THE ESTATE OF THE DECEASED.

This is an appeal by Allen A. Burch, the defendant, from a judgment of the County Court of Cook County, on a verdict of a jury for \$1000 in favor of the plaintiff, the estate of the deceased, in an action brought by the plaintiff to recover compensation for procuring a purchaser named Henry T. Budge, alleged to have been killed, who was willing to pay certain property owned by the defendant.

The plaintiff claims on which the defendant seeks for a reversal is that Burch did not comply with the agreement in regard to a deposit of "earnest money." The evidence shows that the defendant and Burch had entered upon the terms of the sale, and had met together with Burch in the office of Edward C. Budge, the attorney for the defendant, to execute the details of the sale. It was agreed at this meeting that the attorney should prepare a contract for the sale of the property and that the parties to the contract should meet in the attorney's office the next day to sign the contract. The defendant called on the attorney's office the next day and told the attorney not to do anything further until the attorney heard from him; and the attorney notified Burch that it would not be necessary for him to come down to his office as the defendant had called the day off.

The defendant contends that he refused to consummate the sale because at the meeting in the attorney's office Knipp failed to make the deposit agreed upon.

The plaintiff maintains that at the meeting in the attorney's office Knipp complied with the agreement in regard to the deposit.

The evidence in respect of the deposit is conflicting. Three witnesses, Clyman, Dolan and Knipp, testified on behalf of the plaintiff, as against the testimony of the defendant alone in his own behalf.

Clyman testified that Knipp had a certified check which he thinks was for \$2500; that Knipp did not tender the check to the defendant.

Knipp testified that he had a personal check for the earnest money; that there was talk about \$2500 earnest money as being five per cent of the purchase price; but that as the defendant was going to stay in possession for some time, he, Knipp, stated he would like to have the privilege of putting up \$5,000 in bonds so that he would have the benefit of the interest until the deal was closed; that the defendant said that was satisfactory; that he, Knipp, had the money with which to get the bonds; that the morning after the meeting in the attorney's office he, Knipp, went to the Sheridan Bank to get the \$5,000, and called the attorney on the 'phone.

Dolan testified that Knipp said he did not have any cash to put down but that he "would place in lieu thereof certain securities that could be put up in escrow with the Chicago Title and Trust Company;" that he, Dolan asked the defendant "if that was satisfactory" and that he said "yes provided the securities were of a merchantable kind;" that the defendant said he "would take cash or securities satisfactory to him;" that he, Dolan,

said that he "was acquainted with securities, being in a bank, and that he (the defendant) could rely on" his "judgment to pick out the securities which should be deposited."

The memoranda made by attorney Dolan as the data from which to draw the contract for the sale of the property, shows the following notation: "\$5000 earnest money, to be in cash or approved securities."

The defendant testified that at the meeting in the office of his attorney, he stated that he was ready to make the sale of his property if Knipp was ready to pay the deposit of \$5,000 that was agreed upon; that he, the defendant, asked for money or checks; that Knipp did not show any money or checks; that there was no deposit paid to him; that there "was no talk" about putting up bonds instead of cash; that he "told them if they will not pay a deposit to-night I will not be responsible that will happen to-morrow; that if no deposit was made there would be no deal; that there was no talk at any time by anybody of a deposit of \$2500;" that he asked for \$5000; that the day after the meeting in his attorney's office, he, the defendant, went to see his attorney and told him that Knipp was not ready to pay the deposit and that he, the defendant, and his wife had decided "to have nothing to do - there was no deal."

Clyman testified in rebuttal that at the meeting in the office of the defendant's attorney, the defendant did not say to Knipp in words or in substance: "Pay me a deposit or the deal will never go through."

We are of the opinion that there is ample evidence to sustain a finding by the jury that Knipp complied with the agreement in respect of the deposit or "earnest money."

The rule, which is a familiar one, is that the verdict of the jury will not be disturbed where the evidence is con-

and that he was acquainted with the defendant, being in a room
and that he (the defendant) could not see him (the witness) in the
out of the courtroom which should be deposited."

The witness made by attorney when at the date from
which to pay the amount for the sale of the property, where
the collection, collection; "I have no money, to be in cash ex
approved securities."

The witness testified that at the meeting in the
office of the attorney, he stated that he was ready to pay the
sale of the property if the attorney would pay him the amount of
\$1,000 that was agreed upon; that he, the witness, asked for
money or bonds; that the attorney did not have any money or checks;
that there was no deposit paid to him; that there was no cash
whatsoever in his hands at that time; that he "told him that if
they will not pay a deposit to-night I will not be responsible
what will happen to-morrow; that if he deposit the money there
would be no doubt; that there was no talk of any kind by anybody
of a deposit of money; that he asked for \$1,000; that the attorney
after the meeting in the attorney's office, he, the witness,
went to the attorney and told him that he had no money
to pay the deposit and that he, the attorney, and his wife had
declined "to have no thing to do - there was no deal."

The witness testified in regard to the meeting in
the office of the defendant's attorney, the witness did not
say to him in words or in substance; "I have no deposit or
the deal will never be made."

He was of the opinion that there is some evidence
to sustain a finding by the jury that the witness deposited with the
attorney in regard to the deposit of the defendant's money.
The rule, which is a familiar one, is that the verdict
of the jury will not be disturbed where the evidence is such

flicting and the facts and circumstances by fair and reasonable
intendment will authorize the verdict. The Illinois Central Ry.
Company v. Gillis, 68 Ill. 317, 319; Bradley v. Palmer, 103 Ill.
15, 29; Carney v. Sheedy, 295 Ill., 78, 83.

Counsel for the defendant contends that the trial
court committed reversible error in allowing Glyman to testify on
direct examination, over the defendant's objection, that the
financial worth of Knipp above his indebtedness was \$75,000.
The ground of counsel's contention is that Glyman had not been
shown to be qualified to answer the question; and that his answer
was only a conclusion. We do not think that the question and
answer constitute prejudicial error in view of the fact that
on the cross-examination of Glyman by the defendant's trial at-
torney as to how Glyman obtained his knowledge that Knipp was
worth \$75,000, Glyman stated that he knew Knipp was worth that
amount because he, Glyman, was at a sale of a piece of property
that brought Knipp \$35,000 in cash; that he had seen Knipp pur-
chase property "just previous to this" where there was \$25,000
cash involved, and that he saw Knipp pay a certified check for the
property; and that he knew that Knipp owned "other equities."

Counsel for the defendant further contends that on
the examination of Glyman the trial court erred in denying the de-
fendant's motion to strike out an answer of Glyman's that Knipp
"owned various pieces of real estate with nominal mortgages," on
the ground that Glyman admitted that he obtained his knowledge
that the mortgages were nominal from what Knipp told him.

We do not think that the objection is well taken.
The testimony of Glyman that is complained of was brought out by
defendant's trial attorney on the cross examination of Glyman.

It is the rule that a trial attorney is not allowed
to elicit testimony on cross examination, and if the testimony is

unsatisfactory have it excluded. Caper et al. v. DeSteiger Glass Company, 105 Ill., 185, 190.

Counsel for the defendant further contends that on the direct examination of Knipp by the trial attorney for the plaintiff, Knipp was allowed to testify, over the objection of the trial attorney for the defendant, that he had probably \$30,000 or \$40,000 in "liquid assets;" that immediately after giving this testimony Knipp testified he owned in real estate over indebtednesses and exemptions \$30,000 or \$40,000.

Counsel for the defendant maintains that the phrase "liquid assets" is a conclusion; and that the further testimony of Knipp in regard to the real estate he owned cannot be considered as explaining what he meant by liquid assets, as equities in real estate are slow assets.

We think that the objection of counsel for the defendant is without merit.

For the reasons stated the judgment of the trial court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

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253 - 30106

E. C. BROWNLEE,
Appellant,

vs.

DAN SOBEL,
Appellee.

5087a
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

240 I.A. 676

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action brought by E. C. Brownlee, the plaintiff, against Dan Sobel, the defendant, to recover \$2000 alleged to be due to the plaintiff from the defendant for procuring a purchaser for the restaurant of the defendant.

The case was tried before a jury and the jury returned a verdict in favor of the plaintiff in the sum of \$2000. The court entered judgment on the verdict and the defendant prosecuted the present appeal from the judgment.

The evidence is conflicting. By written agreement the defendant appointed the plaintiff as the exclusive agent of the defendant to sell the restaurant of the defendant. The agreement was as follows:

"Feb. 20th, 1923.

Mr. E. C. Brownlee,
25 North Dearborn Street,
Chicago, Illinois.

I, the undersigned, owner of the restaurant at 33 N. Market street, hereby appoint you as exclusive agent to sell said restaurant and equipment for me at a price of sixteen thousand dollars (\$16,000). This includes all the merchandise and fixtures now located in said premises and a two year lease at \$175 per month rental. It is understood that you are to have the exclusive right to sell this place for me for a period of sixty days from the above mentioned date. It is understood that

[illegible]

853 AL04S

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
DOES hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the said Court.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day of January, 1901.
JAMES M. HARRIS, Clerk of the Court.

... ..

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

1. The undersigned, owner of the trademark of the
2. United States, hereby certifies that the
3. said trademark was assigned to me by a valid and
4. enforceable contract (S.S. No. 100). This trademark has been
5. and is now used in the United States and in foreign
6. of the said trademark. It is requested that you be
7. The undersigned is fully aware of the fact that
8. said trademark has been assigned to me by a valid and

if you, I or anyone else acting for me shall sell the place during this time you are to receive a commission of \$2000 to be paid at the consummation of the deal. I agree to give possession of said premises at once.

Dan Zobel."

According to the evidence on behalf of the plaintiff, during the period of the 60 days fixed by the agreement, the plaintiff advertised the property for sale in the Chicago Tribune and Chicago Daily News, two daily papers published in Chicago; that the plaintiff spent \$270 on advertising the property; that the plaintiff had 800 to 1000 circulars printed and mailed to restaurant keepers and prospective purchasers; interested numerous prospective purchasers in the property; personally took ten or twelve of the prospective purchasers to view the property and introduced them to the defendant; and had many conferences with the defendant in regard to the negotiations for the sale of the property.

Evidence on behalf of the plaintiff shows further that in the first week of April, 1923, the plaintiff had a conversation with the defendant in which the defendant told the plaintiff that he, the defendant, "had been talking with a customer for the restaurant, but that the customer would not be interested in purchasing the place unless he could get a five year lease" from the owner of the premises in which the restaurant was conducted; that the customer's name was Elmer C. Cook; that the defendant told the plaintiff that as the plaintiff "handled the owner's other real estate" the plaintiff could "get the owner to work out a five year lease;" that the plaintiff succeeded in getting the lease; that on April 19, 1923, the lease was executed in the office of Harold Finder, the attorney for the owner; that a man named Cecil A. Brown, a real estate broker, who claimed to

It was, I suppose, after the trial that the plaintiff
 had this idea and was in receipt of a commission of \$1000 in the
 fall of the commission of the deed. I claim to have possession
 of said property at once.

THE COURT.

According to the evidence on behalf of the plaintiff,
 during the period of the deed there was no agreement, the
 plaintiff having the property the same in the hands of the
 and during the period, the plaintiff having the property the
 that the plaintiff must have an agreement the property the
 the plaintiff had not to have any other person who could be
 defendant's interest and possession of the property; therefore, the
 the plaintiff's possession in the property; therefore, the
 as far as the commission was concerned as was the property and
 defendant then to the plaintiff and had no other interest with
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 property.

Witness on behalf of the plaintiff who further
 that in the last week of April, 1905, the plaintiff had a com-
 mission with the defendant to take the defendant's share of the
 plaintiff's share of the defendant, "but none having been a com-
 mission for the plaintiff, but that the defendant would not be in-
 terested in the plaintiff's share unless he could get a share from
 him; that the share of the plaintiff in which the defendant was
 interested; that the defendant's share was about 10 percent; and the
 defendant had the plaintiff's share in the plaintiff's share of the
 share's share was about 10 percent; the plaintiff could not the share in
 that was a five year term; that the plaintiff's share was in the
 that the share was about 10 percent; that the share was about 10 percent in
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 was about 10 percent; a five year term, the share was about 10 percent in

have negotiated the sale of the restaurant to Cook for the plaintiff and who also claimed that he was present in Finder's office on April 10, 1923, when the lease was executed, was not present in Finder's office on that occasion; that when Finder's attention was called to Brown on the trial Finder testified that he was quite sure he had never met Brown at any time and that he did not know him; that when the lease was executed there were present in Finder's office, Finder, Cook, the plaintiff and the defendant; that after the lease was executed it was handed to Cook and that Cook gave a check to the defendant for \$16,000; that the defendant gave Cook a bill of sale or an instrument transferring the restaurant; that the plaintiff said to the defendant, "What about the commission?" that the defendant replied, "Try and get it, try to collect. Go sell it again;" that the plaintiff said, "How can you do that if you made a lease with Cook and you have got the money?" that the defendant said, "Never mind that, go sell it again;" that before the transaction with Cook the plaintiff had told the defendant that he had two prospective purchasers for the restaurant named Foxell and Kenuchi, who would pay \$6000; that the defendant said, "Well, what is the difference if Cook takes it or Foxell takes it, as long as I get the money?"

The evidence on behalf of the defendant shows that the defendant did not see the plaintiff for thirty-five or thirty-six days after the defendant signed the agreement giving the plaintiff the exclusive agency to sell the restaurant; that the defendant did not go to see the plaintiff because the defendant was not in a hurry to sell the restaurant; that the defendant might have gone to see the plaintiff seven or eight times between February 20, 1923, and April 20, 1923; that the defendant read the Chicago Tribune and the Chicago Daily News and did not see any advertisements for the sale

of the restaurants in these papers; that the plaintiff did not tell the defendant that he had purchasers for the restaurant named Foxell and Renouchi; that about April 5, 1923, the defendant told the plaintiff he, the defendant, had a purchaser named Rothschild, who would give \$7,500; that the plaintiff said, "Grab hold of it Zobel, it is as much as you can ever get for the place. I can't get you \$16,000 for that place with a two year lease;" that the defendant said that he would get a five year lease; that Rothschild signed a lease for five years in the presence of the plaintiff; that the plaintiff said that he would take the lease to the landlord and have him sign it; that the plaintiff telephoned that he couldn't get the lease; that the defendant finally sold the restaurant to Cook for \$7,000; that Brown of the firm of Brown & Hammer represented the defendant; that the defendant gave Brown \$500 and gave Benjamin J. Morris \$1000 for the owner of the property to get him to sign the lease; that Cook gave Brown and Hammer a check for \$8,500, and that Brown and Hammer gave the defendant a check; that the transaction took place in the office of Brown and Hammer; that on April 10, 1923, Brown, Hammer, Cook, and the defendant were in the office of Finder when the five year lease to Cook was executed; that the plaintiff was in an ante-room or in the hall; that Cook never saw the plaintiff until he saw him in court on the trial of the present case; that no check was passed to Cook from the defendant in Finder's office; that Brown knew that the plaintiff had the exclusive agency to sell the restaurant; that the defendant had nothing to do with the purchase of the restaurant by Cook; that when Cook gave the defendant the money for the restaurant the defendant told Cook that the plaintiff had an exclusive agency to sell the restaurant and that the plaintiff had a claim for \$2000 for commissions. The evidence on behalf of the defendant showed further that when the restaurant was sold to Cook

on April 10, 1923, the defendant told Cook that "it would be advisable not to take possession until after the expiration of the exclusive agreement;" and that that was the reason that Cook did not take possession on April 10, 1923, when he got his bill of sale and lease.

We do not deem it necessary to point out specifically the many material conflicts in the evidence we have set out above. The conflicts are obvious. There is, however, ample evidence to sustain the verdict of the jury. In this state of the record, according to the familiar rule, the verdict of the jury should not be disturbed. In the case of The Illinois Central Ry. Co. v. Gillis, 68 Ill., 317, the court said (p.319): "If any rule of this court can be so well established as to be neither questioned nor require the citation of authorities to support it, it is that a verdict will not be set aside whenever there is a contrariety of evidence, and the facts and circumstances by fair and reasonable intendment, will authorize the verdict, notwithstanding it may appear to be against the strength and weight of the testimony." To the same effect are the following cases: Bradley v. Palmer, 193 Ill., 15, 89; Carney v. Shedy, 295 Ill., 78, 83; Blackhurst v. James, 304 Ill., 586, 592. In the case of People v. Baugher, 303 Ill., 375, the court explicitly stated (pp. 380, 381): "It is the most important function of the jury and their peculiar province to determine the truth of the case, and the opportunity which they have of seeing and hearing the witnesses during their examination and cross-examination is clearly superior to that of a court of review which has before it only a record of the words used by the witnesses."

It will be observed from the evidence which we have set out above, that the restaurant was sold to Cook by the defendant before the expiration of the time within which the plain-

on June 10, 1950, the defendant said that his wife at
 that time was in the hospital and that the defendant was
 the exclusive witness; and that fact was the reason that he
 did not have possession on June 10, 1950, when he was still
 at the hospital.

It is not open to question, in light of the
 facts, that the defendant's conduct in the evidence as to his
 wife's absence, the defendant was absent. There is, however, some
 evidence to indicate that he was not. In this case of
 the state, according to the defendant's testimony, the
 facts would not be admitted. In the case of the defendant

People v. J. J. J., 317, the court said (p. 317):
 "It may well be that some one will establish as to be
 that the defendant was not the origin of the evidence in
 evidence, if it is a fact that will not be set aside
 there is a possibility of evidence, and the facts and circumstances
 which are in the defendant's interest, will establish the

facts, and the defendant is not known to be the origin of the
 facts of the evidence. It is the same effect as the following
 facts: People v. J. J. J., 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

It will be observed from the evidence that the
 fact that the defendant was not in the hospital on June 10,
 1950, is not a fact that is in dispute. The fact that the
 defendant was not in the hospital on June 10, 1950, is not a fact
 that is in dispute. The fact that the defendant was not in the
 hospital on June 10, 1950, is not a fact that is in dispute.

tiff had the exclusive agency to sell the restaurant. It is true that by agreement between Cook and the plaintiff the possession of the restaurant was not given to Cook until after the expiration of the time within which the plaintiff had the exclusive agency to sell the restaurant. In our opinion this was merely a subterfuge on the part of the defendant to evade the payment of a commission to the plaintiff. As was said in the case of Holly Springs Savings and Insurance Company v. Board of Supervisors of Marshall County, 52 Miss., 281, 238, 289, "courts will look through the sham and measure the rights of the parties by the real nature of the transaction."

Counsel for the defendant contend that on "a fair, full and complete interpretation" of the agreement giving the plaintiff the exclusive agency for 60 days to sell the restaurant, the defendant "was not prohibited himself from making a sale of the property and that in the event he made such sale to anyone not produced by the plaintiff he would not be liable to him for commissions." The defendant may not have been precluded from selling the restaurant within the sixty days, but if he did sell it during that time, by the terms of the agreement he was under a legal obligation to pay the plaintiff the commission stipulated in the agreement, provided the plaintiff had not abandoned the contract; Hanlon v. Dunne, 189 Ill. App., 123, 125; and we do not think that the evidence shows that the plaintiff had abandoned the contract.

Counsel for the defendant further contends that the contract was unilateral and therefore not enforceable.

The answer to this contention is that the evidence shows that the contract was performed. The rule is well settled that a promise lacking in mutuality in its inception becomes binding

ing on the promisor after performance by the promisee. Plumb v. Campbell, 129 Ill., 101, 107; Hanlon v. Dunne, 139 Ill. App., 123, 125.

The judgment of the trial court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

... on the ground after perusal of the record. Page 7.
Case No. 111, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The judgment of the trial court is affirmed.
Affirmed.

Attest: J. H. and Secretary, J. H. County.

262 - 30115

THE CHICAGO SMELTING & REFINING
CORPORATION, a Corporation,
Appellee,

vs.

THOMAS H. SULLIVAN, Doing Business
as United Electric Service Company,
Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

240 I.A. 677

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action brought in the Municipal court of Chicago by The Chicago Smelting & Refining Corporation, the plaintiff, against Thomas H. Sullivan, doing business as the United Electric Service Company, the defendant, to recover the sum of \$1457.10 alleged to be due to the plaintiff for certain pig lead sold by the plaintiff to the defendant. Judgment was entered in favor of the plaintiff for the sum of \$1457.10 and costs. From the judgment the defendant has prosecuted the present appeal.

To the plaintiff's statement of claim the defendant filed an affidavit of merits and a set-off. Subsequently the plaintiff filed an amended statement of claim, alleging the same facts as were alleged in the original statement of claim, with the additional allegation that the plaintiff, "The Chicago Smelting and Refining Corporation, a corporation, was incorporated under the laws of the State of Illinois on November 21, 1923." To the amended statement of claim the defendant filed an affidavit of merits containing the same allegations as in the original affidavit of merits. The plaintiff made a motion to strike from the files the defendant's affidavit of merits to the amended statement of claim; and also moved to strike from the files the defendant's set-off which had been filed to the original statement of claim. The court sustained both of the motions of the plaintiff and gave

the defendant leave to file another affidavit of merits. The defendant also asked leave to file an amended set-off. The court denied the motion. The defendant then filed another affidavit of merits.

The court struck this amended affidavit from the files. The defendant then moved for leave to file another amended affidavit of merits. The court denied the motion and entered judgment against the defendant as of default, assessing the damages at the sum of \$1457.10.

In the view we take of the case the only question is whether the court erred in refusing to allow the defendant to file an amended set-off.

The defendant is not entitled to have the question of the sufficiency of his third affidavit of merits reviewed, for the reason that he waived that right by making a motion to file another amended affidavit of merits. The record shows that the defendant filed three affidavits of merits, all of which were stricken from the files. The defendant made a motion to file a fourth affidavit of merits, which motion was denied. In our opinion it was this motion which constituted a waiver of the defendant's right to have the sufficiency of his third affidavit of merits reviewed. The rule, as stated in the case of Harrie et al. v. Willis, 209 Ill. App. 401, 402, is that "A defendant whose affidavit of merits and statement of set-off have been stricken waives any right of having the court's ruling reviewed on appeal where he thereafter asks leave to file an amended affidavit and statement." On principle the question of abandonment depends on the question of intent; and intent may be manifested as well by a motion for leave to plead over as by an actual pleading over. If the defendant had desired to test the sufficiency of the third affidavit of merits, he should have stood

The defendant claims to be a resident of Mexico. The fact
 that he was born in this country does not establish his
 residence in Mexico. The defendant has not shown that he
 resides in Mexico.

The court finds that the defendant is a resident of
 Mexico. The defendant has shown that he has been
 residing in Mexico for a long time and that he has
 acquired the rights and obligations of a resident of
 Mexico. The defendant is therefore a resident of
 Mexico.

In the view of the court, the only question is
 whether the court should in refusing to allow the defendant to file
 an amended petition.

The defendant is not entitled to have the question of
 the validity of the third affidavit of service reviewed, for the
 reason that he waived that right by failing to file a motion
 for review of the third affidavit of service. The court finds that the defendant
 filed three affidavits of service, all of which were returned from
 the office. The defendant made a motion to file a fourth affidavit
 of service, which motion was denied. It was held that the
 fact which constituted a waiver of the defendant's right to have the
 validity of his third affidavit of service reviewed. The rule, as
 stated in the case of Wright et al. v. Wright, 100 Cal. 441,
 is that "a defendant whose affidavit of service and return are
 returned have been returned without any right to have the court's
 ruling reviewed as a matter of course. The defendant is not to be
 allowed to review the return of the court's ruling on the question of
 service. On review the question of
 service is not to be reviewed on the question of return; and the court
 is not to be allowed to review the return of the court's ruling on the
 question of service. If the defendant had desired to have the
 validity of the third affidavit of service reviewed, he would have shown

by the affidavit. Stuber v. Schaack, 83 Ill., 191; McKichan v. Pollett, 87 Ill., 103, 104.

We do not think that the refusal of the court to allow the defendant to file a fourth affidavit of merits can be said to be an abuse of discretion. Harris et al. v. Willis, *supra*, (p. 403). We have examined the affidavit of merits, however, and we do not think that it presented a sufficient defense. There is no allegation that the defendant rejected the pig lead, and there is no allegation that the defendant ever offered to return the pig lead to the plaintiff.

Counsel for the defendant state that the "defendant did not know and could not know as to whether or not the merchandise was proper; and he only discovered the imperfections of the material when his customers complained and refused to pay for the merchandise he sold them."

The answer to the contention of counsel for the defendant is that there is no allegation that after the defendant made such discovery the defendant notified the plaintiff and offered to return the pig lead. The law is that the buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after a lapse of reasonable time, he retains the goods without intimating to the seller that he has rejected them. Sales Act, section 48, chap. 121a.

The second amended set-off which the court refused leave to the defendant to file, is as follows:

"That on or about, to-wit: July, 1923, he became and was the legal holder and owner of a note for the sum of \$2,000.00, signed by the Chicago Smelting & Refining Co., by L. C. Robinson; that thereafter, on or about the 21st day of September, 1923, the

of the affidavit. James V. Brown, et al., Jan. 1902, 104.
104, 105, 106, 107.

It is not clear that the refusal of the court to

allow the defendant to file a proper affidavit of assets was an

error to be corrected by the court. Brown v. Brown, 104, 105, 106, 107.

(p. 107). "We have examined the affidavit of assets, however, and

we do not think that it presented a sufficient defense. There is

no allegation that the defendant refused to file the affidavit, and that

it is sufficient that the defendant was offered to return the

affidavit to the plaintiff.

However, for the reasons stated that the defendant

did not know and could not know as to whether or not the court

was correct; and he only the court was instructed as to

material when the court's decision was rendered; and for the

reasons stated he was correct."

The answer to the question of remedy for the

defendant is that there is no remedy after the judgment

was made. However, the defendant could have obtained the plaintiff's

copy of the return of the plaintiff. The law is that the return is deemed

to have accepted the facts which are indicated in the return. But he

has accepted them, or when the facts have been delivered to him,

and he has not set in relation to them with an independent view

the ownership of the matter, or when, after a lapse of reasonable

time, he returns the matter without objection to the return that he

has accepted them. Brown v. Brown, 104, 105, 106, 107.

The second remedy set out with the first remedy

is in the defendant's favor, in the following:

"That on 27 March, 1902, the court, 104, 105, 106, 107,

and the legal matter was heard at a date for the day of 10, 11, 12, 13,

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Chicago Smelting & Refining Co. paid the sum of \$500.00 on account of said note, and issued three new notes each for the sum of \$500.00 dated September 21, 1923, and payable to the order of Arthur Storage Battery Supply Co.; that the defendant herein became the legal holder and owner of the said three notes, and that he delivered up to the Chicago Smelting & Refining Co. the said note for the sum of \$2,000.00; that the said three notes became due in thirty, sixty and ninety days after date, that they were signed by the Chicago Smelting & Refining Co. by L. C. Robinson, and that the said notes were endorsed in blank by the said Arthur Battery Supply Co., and also by one H. L. Robinson, and negotiated and delivered to the defendant herein for a valuable consideration, and that the said Thomas H. Sullivan is now the legal holder and owner of the said three notes, said notes being more fully described as follows: (the notes are set out); that at the time of the execution of the said notes, the said L. C. Robinson was engaged in business with and as the partner of one H. Feinberg, doing business as Chicago Smelting & Refining Company; that thereafter, to-wit: November 21, 1923, said partnership business was incorporated under the name of Chicago Smelting & Refining Corporation, the plaintiff herein, and the said Chicago Smelting & Refining Corporation assumed to pay the obligations of the said business as conducted prior to the incorporation; that the said notes were presented for payment on the dates they became due, and that the Chicago Smelting & Refining Corporation has failed and refused to pay same; that the said notes bear interest at 6% per annum, and that principal and interest now owing amount to \$1560.00."

Counsel for the plaintiff contends that the general rule is that where a partnership is incorporated, the corporation does not become liable for the indebtedness of the partnership unless the corporation has expressly assumed such indebtedness;

and that the allegations in the set-off in the case at bar are not sufficient to show that the indebtedness of the partnership was assumed by the plaintiff.

The general rule may be correctly stated by counsel for the plaintiff, but we are of the opinion that the assumption by the plaintiff of the liability of the notes in question was sufficiently alleged in the set-off by the averment that the plaintiff "assumed to pay the obligations of said business as conducted prior to the incorporation."

Counsel for the plaintiff maintains that this allegation "is a mere conclusion and is meaningless." The allegation is a conclusion, but we think that it is a conclusion of an ultimate fact, and that it constitutes proper pleading. We recognize, of course, the general rule of pleading that conclusions of fact, and not conclusions of law, should be pleaded. The distinction between conclusions of fact and conclusions of law is difficult to draw. The difficulty has been well expressed in the case of Clark v. Chicago, Milwaukee and St. Paul Ry. Company, 28 Minn. 69, in which the court said (pp. 71, 72): "It may not be possible to formulate a definition that will always describe what is a mere conclusion of law, so as to distinguish it from a pleadable, ultimate fact, or that will define how great an infusion of conclusions of law will be allowed to enter into the composition of a pleadable fact. Precedent and analogy are our only guides. And it is undoubtedly true that there will be found a want of entire judicial harmony in the adjudicated cases as to what are statements of fact, and what are mere conclusions of law. And in holding one class of inferences as facts to be pleaded, and another as conclusions of law to be avoided, courts may have been often governed more by precedent than by a substantial difference in principle."

Ultimate facts are conclusions of facts. Brown v. City of Aurora, 109 Ill., 165, 167; Roemheld v. City of Chicago, 231 Ill. 467. To reach an ultimate fact or a conclusion of fact it may be necessary to apply legal principles and thus make the conclusion a mixed one of law and fact. Roemheld v. City of Chicago, *supra*, (p. 470.) But it is permissible to plead a conclusion that is a mixed one of law and fact. This must necessarily be so, as otherwise pleadings would be mere statements of evidentiary facts, and would become intolerably prolix. Clark v. Chicago, Milwaukee & St. Paul Ry. Company, *supra* (p. 71). The law is well settled that ultimate facts may be pleaded. 21 Huling Case Law, 438; Chicago, Milwaukee & St. Paul Ry. Company, *supra*, (p. 71).

In the case of Harding v. Parshall, 56 Ill., 219, it was held (p. 226) that it is sufficient to allege that a party to a contract executed the contract and that it was not necessary to aver the manner of the execution of the contract; and it was also held (p. 226) that an allegation that a party to a contract ratified the contract was sufficient.

In the case of Matthiessen v. Duntley, 307 Ill., 36, it was held (pp. 39, 40) that an allegation that there was no consideration for a contract was sufficient.

Counsel for the plaintiff further contends that the defendant abandoned the second amended set-off by filing another set-off; and that the latter set-off is wholly insufficient.

We do not think that the contention is sound. After the court refused the defendant leave to file the second amended set-off the defendant did not file another separate set-off; but when by leave of court he filed his third amended affidavit of merits, he included in the amended affidavit of merits the following allegations:

"Defendant further states that he has a set-off and claim against the plaintiff for three notes dated September 21, 1923, each for the sum of \$500.00, and due in thirty, sixty and ninety days after date, which notes were signed by the Chicago Smelting & Refining Company, by L. C. Robinson; that the plaintiff is indebted to this defendant on said notes in a total sum of \$1,560.00, and that this defendant is not only not indebted to plaintiff, but that plaintiff is indebted to this defendant in the sum of \$1,560.00."

The defendant had no right to file another set-off as the court had previously refused to allow him to file the second amended set-off; and the defendant did not renew his motion to file a third amended set-off. If the allegations which we have quoted above from the third amended affidavit of merits should be construed as constituting a set-off, then the defendant filed the set-off without presenting it to the court as a set-off, and without asking leave of the court to file it as a set-off. The alleged set-off, as we have stated, was contained in the third amended affidavit of merits; and the order of the court was to strike the third amended affidavit of merits from the files. The order made no reference whatever to a set-off. In this state of the record the allegations contained in the third amended affidavit of merits properly could not be treated as a set-off. As there was no order of the court to strike the alleged set-off from the files, no error could be assigned by the defendant on the ground that he had filed a third amended set-off, which the court had stricken from the files. Since the record is in such condition that the defendant is not in a position consistently to term the allegations contained in the third amended affidavit of merits a set-off, the defendant cannot be charged with having abandoned the second amended set-off which he asked leave to file, and which the court refused to allow him

"According to the evidence that he has a right to

claim against the liability for the same under the law of

1901, and for the sum of \$100.00, and for the same and

also for the same, which were claimed by the plaintiff

against the defendant, by J. E. Robinson; and the plaintiff

is entitled to the same on said note in a sum of \$100.00

\$1,000.00, and that this judgment is not only not intended to

definitely, but that plaintiff is intended to this judgment in

the sum of \$1,000.00.

The defendant has no right in this matter and

as the court has previously ruled in favor of the plaintiff

and the defendant has not shown his right to this

a right against the plaintiff. It is the intention of the court

to give the plaintiff the right to the same and to the plaintiff

an amount of \$100.00, and the plaintiff is entitled to the same

without prejudice to the court as a whole, and without prejudice

to the court as a whole. The plaintiff is entitled to the same

as he has stated, and entitled to the same amount of \$100.00

and the court is of the opinion that the plaintiff is entitled to

the same as stated from the court. The court has no objection

to the plaintiff's right to the same. In this case the plaintiff

is entitled to the same as stated from the court. The plaintiff

is entitled to the same as stated from the court. The plaintiff

is entitled to the same as stated from the court. The plaintiff

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is entitled to the same as stated from the court. The plaintiff

to file.

We do not wish to be understood as deciding the question whether under the rules of pleading in the Municipal court, a set-off should be pleaded in a separate plea and designated as a set-off; or whether a set-off is sufficiently pleaded, if, in the affidavit of merits, facts are alleged which properly constitute a set-off. We are merely holding that on the present record it cannot be contended that the language in the affidavit of merits constitutes a set-off.

Since we have held that the court correctly denied the motion of the defendant to file a fourth amended affidavit of merits, the only issue in the case that remains to be determined on a new trial will arise on the defendant's second amended plea of set-off. If the defendant fails in its proof of set-off, judgment must be entered for the plaintiff's claim, as, according to the rule "the plea of set-off is an acknowledgment of the justice of the plaintiff's demand." Raymond et al. v. Kerker, 81 Ill., 381, 382; Smith v. Bellross, 200 Ill. App., 368, 372.

It follows from the views we have expressed that the judgment of the trial court should be reversed and the cause remanded.

REVERSED AND REMANDED.

Matchett, P. J., and McSurely, J., concur.

ANGLO-CALIFORNIA TRUST COMPANY,
a corporation,
Appellant,

v.

ESSANAY FILM MANUFACTURING COMPANY,
a corporation,
Appellee.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

240 I.A. 677

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an action brought by the Anglo-California Trust Company, a corporation, the plaintiff, against the Essanay Film Manufacturing Company, a corporation, the defendant on a contract entered into by the Essanay Film Manufacturing Company and G. M. Anderson, at one time a stockholder in the Essanay Film Manufacturing Company, in which contract the Anglo-California Trust Company acquired rights by virtue of an assignment from Anderson.

The contract is as follows:

"On May 27th, 1919, pursuant to a discussion between ourselves relative to the Chaplin pictures owned by the Essanay Film Mfg. Company (52 per cent) and yourself (48 per cent) you made the Essanay Company the proposition for the purchase of your 48 per cent interest in said Chaplin pictures, viz:

- For the sum 1 - \$25,000 Cash
- 2 - 25,000 Note with int. 5%, 6 months from May 27, 1919.
- 3 - 25,000 to be paid May 27, 1920.
- 4 - 25,000 to be paid Nov. 27, 1920.
- 5 - 25,000 to be paid May 27, 1921.
- 6 - 25,000 to be paid Nov. 27, 1921.

A total of \$150,000 for which you sell, to the Essanay Film Manufacturing Company all right title and interest in said Chaplin pictures represented by the 48 per cent held by you. It is understood and agreed between yourself and Essanay Film Manufacturing Company that Item No. 1 - \$25,000 cash be paid to you. (Item No. 2-\$25,000 note with int. 5% be given you with this memorandum. The further items Nos. 3-4-5-6 representing \$25,000 each are to be paid you at intervals of six months as herein dated provided the sums when due have been earned by said pictures, and at the option of Essanay Film Mfg. Co. - that is to say, that if at any period upon which any unpaid item of \$25,000 is due you, should the Essanay Company desire to return to the

AMERICAN FILM EXCHANGE, INC.
a corporation
of the State of New York
INCORPORATED
under the laws of the State of New York

AMERICAN FILM EXCHANGE, INC.
INCORPORATED
under the laws of the State of New York

2401 A. 877

AMERICAN FILM EXCHANGE, INC. has the honor to acknowledge the receipt of the check.

This is to certify that the check for the sum of \$100.00, payable to the order of American Film Exchange, Inc., has been received by the undersigned on this day of May, 1934. The check was deposited in the bank of New York and City, New York, and the proceeds thereof have been credited to the account of American Film Exchange, Inc., in the name of the undersigned.

The amount is as follows:

For the sum of \$100.00, payable to the order of American Film Exchange, Inc., in the name of the undersigned, the sum of \$100.00 has been received by the undersigned on this day of May, 1934.

For the sum of \$100.00, payable to the order of American Film Exchange, Inc., in the name of the undersigned, the sum of \$100.00 has been received by the undersigned on this day of May, 1934.

A total of \$100.00 has been received by the undersigned on this day of May, 1934, in the name of American Film Exchange, Inc., in the name of the undersigned, the sum of \$100.00 has been received by the undersigned on this day of May, 1934.

52-48% basis in lieu of specific payment to you of any of the unpaid items Nos. 3-4-5-6 it shall have full privilege of so doing and thereafter the basis of 52% to Essanay and 48% to you shall prevail. Also between you and the Essanay Film Mfg. Company that this arrangement for the purchase of these Chaplin pictures includes everything represented by your 48% interest in said property, excepting a 48% interest in recovery or loss together with cost and expense in the prosecution and defense of any and all suits at law now existing and of date of May 27th or previous thereto in the Federal or State Courts between Charles Chaplin and Essanay Film Mfg. Company. The \$25,000 cash item No. 1 - has been paid to you, and the note for \$25,000 item No. 2 - is herewith enclosed. This memorandum is enclosed to you in duplicate. Please sign as accepted in the space indicated below and return original copy by immediate mail. It is agreed that May 27, 1919, is the date of this transaction.

Yours truly,

(Signed) Essanay Film Mfg. Co.,
By Geo. K. Speer, Pres.

Accepted May 27, 1919,
(Signed) Essanay Film Mfg. Co.,
By Geo. K. Speer, Pres.

Accepted May 27, 1919,
(Signed) G. M. Anderson."

The plaintiff claims that under the contract there is due and owing to the plaintiff the sum of \$25,000.

The defendant filed the plea of general issue and a plea of set-off. In the plea of set-off the defendant alleged that the defendant had expended in the prosecution and defense of the litigation between the defendant and Charles Chaplin the sum of \$47,881.29; and that by the terms of the contract Anderson, the assignor of the plaintiff, owed the plaintiff 48% of that amount, namely, \$22,973. Attached to the plea of set-off is an itemized statement of the expenditures alleged to have been made by the defendant in the prosecution and defense of the litigation.

The case was tried before a jury. On the trial the defendant admitted the claim of the plaintiff and relied only on the plea of set-off. The jury returned a verdict in favor of the plaintiff in the sum of \$3,581.87. In other words, the jury allowed the defendant a set-off amounting to \$21,418.13. The court entered judgment on the verdict. From the judgment the

plaintiff has prosecuted this appeal.

The grounds on which counsel for the plaintiff ask for a reversal of the judgment relate mainly to the evidence.

The defendant corporation was engaged in the business of producing moving pictures. Spoor was president of the corporation and owned 52% of the stock. Anderson was a stockholder and owned 48% of the stock. In the year 1916 Anderson sold his stock to Spoor and ceased to be a stockholder in the defendant corporation. Anderson had a joint interest with the defendant in certain pictures which had been produced by the defendant for Charles Chaplin, and which were known as the Chaplin pictures, Anderson's interest in the pictures being 48% and the interest of the defendant being 52%. It was in regard to Anderson's interest in the Chaplin pictures that the contract in question between the defendant and Anderson was entered into. Before the making of this contract litigation had arisen between Chaplin and the defendant concerning the Chaplin pictures. One of the pictures called "Carmen," which was originally made for two reels, was lengthened by the defendant to a four reel picture, and was sent to the distributing office of the defendant for sale and distribution. Chaplin brought suit against the defendant in New York City for damages to his reputation in the amount of \$100,000, because of the changed condition of the picture, and also sought to enjoin the exhibition of the Carmen picture. William M. Seabury of New York, an attorney of the firm of Seabury, Massey and Lowe, was retained by the defendant to represent the defendant in the litigation. Seabury had represented the defendant before in other matters when Anderson was connected with the defendant. Seabury obtained an injunction restraining Chaplin from interfering with the exhibition of the picture "Carmen." The defendant then brought suit for damages in the amount of \$500,000 against Chaplin in Los Angeles, California, on a contract between Chaplin and the defendant,

plaintiff has presented this appeal.

The court on appeal found for the plaintiff and

for a reversal of the judgment below solely to the evidence.

The defendant's contention was rejected in the business

of plaintiff's moving picture. There was evidence of the com-

position and good will of the work. Defendant was a stockholder

and owned 60% of the stock. In the year 1916 defendant sold his

stock to Green and agreed to be a stockholder in the defendant's

corporation. Defendant had a joint interest with the defendant in

certain picture which had been produced by the defendant for

Charles Chaplin, and which were known as the Chaplin pictures.

Defendant's interest in the picture being 60% and the interest of

the defendant being 40%. It was in regard to defendant's interest

in the Chaplin picture that was involved in question between the

defendant and defendant was entered into. Before the making of

this contract of litigation had arisen between Chaplin and the defend-

ant concerning the Chaplin picture. One of the pictures called

"Modern," which was originally made for two reels, was transformed

by the defendant to a four reel picture, and was sent to the dis-

tribution of 100 of the defendant for sale and distribution.

Chaplin himself sold certain of the defendant in New York City for

license to his reputation in the amount of \$10,000, because of the

characterization of the picture, and also agreed to exhibit the

exhibition of the picture picture. William H. Murphy of New York,

an attorney of the firm of Murphy, Brown and Lane, was retained

by the defendant to represent the defendant in the litigation.

Murphy had represented the defendant before in other matters when

defendant was connected with the defendant. Murphy obtained an

injunction restraining Chaplin from interfering with the exhibition

of the picture "Modern." The defendant then brought suit for

damages in the amount of \$100,000 against Chaplin in New Mexico,

Albuquerque, on a contract between Chaplin and the defendant.

which the defendant alleged Chaplin had broken. The claim of the defendant was that according to the contract Chaplin was to make ten pictures; that Chaplin made only six pictures; that because of Chaplin's failure to make the remaining four pictures, the damages to the defendant, based on a valuation of \$125,000 a picture, amounted to a total of \$500,000. In this suit the defendant was represented by Oscar Mueller and Albert Wright, attorneys in Los Angeles, who had been engaged by Seabury for the defendant. On the advice of Seabury the suit against Chaplin in Los Angeles was dismissed, and a similar suit was begun against Chaplin by the defendant in New York City, in which the defendant was represented by Seabury. Subsequently, without Chaplin's consent, the defendant made up a composite picture of different parts of fourteen or fifteen Chaplin pictures and called it a "Chaplin Revue." When this picture was released by the defendant for distribution Chaplin brought suit against the defendant, alleging that by reason of the manner in which the picture "Chaplin Revue" was made, his reputation was damaged to the amount of \$100,000. The defendant made another picture without Chaplin's consent, called "Triple Trouble," composed of what is called "over takes" of films of Chaplin pictures. Chaplin brought another suit against the defendant for \$100,000 for damages to his reputation because of the alleged inferiority of the picture "Triple Trouble." Chaplin also claimed a share of the profits of a picture called "Police," which was one of the pictures he had made under his contract with the defendant, and concerning the profits of which there was apparently a controversy between Chaplin and the defendant. All of the litigation between Chaplin and the defendant was finally compromised after it had been pending several years. Before the compromise was effected the contract in controversy was entered

into by the defendant and Anderson. In all of the Chaplin litigation the defendant was represented by Seabury as general counsel, assisted by Max D. Steuer as associate counsel.

The question at issue between the plaintiff and the defendant involves the amount of the expenditures that were made in connection with the litigation regarding the Chaplin pictures.

The method by which the defendant proceeded to prove the expenditures was by introducing documentary evidence from the book accounts and records of the defendant, relating to the Chaplin litigation, and showing by oral testimony that these accounts and records were kept in the regular course of business and were correct. The defendant had a special account known as the "Chaplin legal expenses," and in this account all matters concerning these expenses were kept. The documentary evidence introduced by the defendant consisted in substance of bills rendered to the defendant by Seabury, Massey and Lowe for legal services and disbursements, checks payable to Seabury, Massey and Lowe, Mueller and Wright, and Max D. Steuer, for legal services and disbursements, duplicate remittance vouchers, letters and a telegram. The principal oral testimony on behalf of the defendant relating to the documentary evidence, was given by Speer, Mrs. Margaret O'Connor Harris, an auditor of the defendant, and James E. Adam, another auditor of the defendant.

Speer testified that the defendant employed Seabury and that Seabury was "a lawyer of standing at the bar in New York;" that Oscar Mueller and Albert Wright, attorneys in Los Angeles, were engaged by Seabury only to represent the defendant in the Chaplin litigation, and were paid fees by the defendant on the direction of Seabury; that Max Steuer also represented the defendant; that the defendant paid by check fees to all of these lawyers as they rendered their bills; that the bills were ap-

not, collected by Max D. Smith in 1954.

The question at issue between the Plaintiff and the Defendant involves the nature of the relationship that was maintained in connection with the litigation regarding the Plaintiff's divorce. The matter is being presented to prove the nature of the relationship between the Plaintiff and the Defendant.

There is no doubt that the defendant employed Kennedy and that Kennedy was "a member of standing at the bar in New York"; that George Hamilton was a first class attorney in New York; that Kennedy was employed only to represent the defendant in the English litigation, and was paid fees by the defendant on the division of Kennedy; that the latter also represented the defendant; that the defendant paid by check fees to all of those persons as they rendered their bills; that the bills were ap-

proved by him, Spoor, and that he gave instructions to the employees in the office of the defendant in regard to "charging the exhibits introduced in evidence and which are charged to the Chaplin suit;" that the checks which were "introduced in evidence were signed by him as president and treasurer" of the defendant; that there was a stipulated amount agreed upon between him, Spoor, and Seabury, but that the amount varied; that Seabury represented the defendant in other matters, but for services in these matters Seabury rendered separate bills; that the checks paid on account of the item marked "retainer" were paid to Seabury for the Chaplin litigation, and that according to his, Spoor's, understanding the item "retainer" did not cover services for any other litigation; that he, Spoor, sent an employee of the defendant named A. J. Callaghan to California in connection with the Chaplin litigation, and that the notations "expense account, Chaplin suits, legal expenses in the Chaplin films," which were made on the exhibits in evidence relative to the expenses of Callaghan, were made by him, Spoor; that he, Spoor, made trips to New York in regard to the Chaplin litigation.

Mrs. Harris and Adam were called as witnesses by the defendant to identify the exhibits which were offered in evidence by the defendant. The exhibits amounted in number to 146. The necessity of identifying each exhibit was obviated by an agreement which was made by the trial attorneys after Mrs. Harris had testified as to exhibits 1 and 2. Mrs. Harris' testimony in this respect was as follows:

"Exhibit 1 for identification is a check, the amount, date and the name being written by me; the signature 'Essanay Film Manufacturing Company' being printed and the signature 'George K. Spoor' being made by Spoor. That check was made out by me in the regular course of business and was sent to Mueller. With the check I sent the original of the voucher record. Defendants' Exhibit 2 for identification is a record that is a duplicate of the remittance advise that was used, the permanent record for the files. The other was sent to Mueller and this was placed in our files. I made it out during the regular course of business. The words 'Account Chaplin Suit' were placed on there by me. This check

and Exhibit 2 for identification were made out at the same time about the date they bear. We got the check back the following month, in September, and it has been properly charged to banking account of the Essanay."

At this point in the trial, at the request of the trial attorney for the plaintiff, all of the exhibits were given to him and court was adjourned to the following day in order that he might have an opportunity to examine the exhibits. On the convening of court the trial attorneys agreed that the exhibits should be marked in sequence by the court reporter and should be considered as having been identified and offered in evidence. After the agreement was made, and while Mrs. Harris was still on the witness stand pending a discussion of the objections of the trial attorney for the plaintiff to the exhibits, the trial attorney for the plaintiff said to the court, "There are bills in here from Seabury which have not been properly identified as having been sent or received." The court replied, "Listen a minute. I asked the question in there, you will recall this morning, whether it would be considered that all of these exhibits before being offered had been in fact identified, to which you responded yes." To this the trial attorney for the plaintiff answered, "Well, I had in mind, your Honor, the payments made by the checks." The trial attorney for the plaintiff asked the court, "May I have then a general objection to all of Seabury's bills, and all bills of strangers to the record?" The court stated, "You sure may; and it may be considered that you object to each and every exhibit that is offered." The trial attorney for the plaintiff said, "There are witnesses who know about these things. They ought to produce them and tell these things, qualify their exhibits, instead of just bringing on the bookkeeper or auditor who made them out, and only knows what somebody else told her." The court replied, "Well, that is the reason I asked the question this morning." The trial attorney

for the plaintiff answered, "Well, I misunderstood your Honor then. It is not too late for them to introduce this qualifying evidence now." After further colloquy between the court and the trial attorneys, and without any additional examination of Mrs. Harris as to the exhibits, the record shows the following recital: "Defendant's exhibits 3 to 146 inclusive were each of them received in evidence over the objection of the plaintiff to the rulings of the court in this respect, and the plaintiff excepted. Said exhibits are as follows:"

The direct examination of Mrs. Harris was then resumed and she testified as follows:

"Defendant's Exhibit 18, of my own knowledge, is a statement from Seabury, Massey & Lowe, attorneys for the Chaplin account, was received by the Essanay Company while I was there, in the regular course of business, and came to my attention as auditor. Based upon statements such as that, I made out the check payable to the attorney and then posted it to the proper account. During the time I was with the Essanay people I received a great many statements from this law firm to which I have referred. All statements that came in from Seabury were treated in exactly the same manner. I know A. J. Callaghan, who was at one time employed by the Essanay Film Manufacturing Company and who did a great deal of legal work. Defendant's Exhibit 126 was paid to A. J. Callaghan, who is the party to whom I referred as being employed by the Essanay Company. In connection with defendant's exhibit 127, Callaghan made a trip to California to interview Charlie Chaplin for Speer. I know this of my own knowledge. I know of my own knowledge that defendant's exhibits 135 and 136 were for Speer's traveling expenses to New York on account of the Chaplin suits. At the time I was auditor other checks were issued to Speer, being defendant's exhibits 137 to 146, inclusive, and my answer would be the same with reference to these. Defendant's exhibits 120 and 121 were not prepared by me. The great number of bills from Seabury which were introduced in evidence were received in the regular course of business while I was auditor. When the bill came in, sometimes Speer got the bill and would then send it to me and tell me to make out a check payable to Seabury and to mail it to him. After I mailed the check it was charged to the proper account and the invoices placed in the files for permanent record. We had a special account known as the Chaplin legal expenses and these exhibits which have been introduced in evidence were charged to that account. Outside of the exhibits which were made after I left, all the work was done by me personally. I saw Seabury at the Essanay office, 1333 Argyle street. When the checks in evidence were returned, they would be reconciled with the bank account and then filed. The accounts which were sent by Seabury were not always paid in full. Sometimes there would be several months elapse and then

they would be paid on account."

On cross-examination Mrs. Harris testified as follows:

"I know Speer, who is sitting in the courtroom beside Governor Deneen. I know the meaning of the expression 'of your own knowledge.' I said that Callaghan was employed by the Essanay Company. I was not present when he was employed. I know he was on the payroll, I paid him his salary. He was a lawyer before he came to the Essanay. I know this of my own knowledge. I did not know him before he came to the Essanay. I do not know of my own knowledge what he did before he came to the Essanay. I testified here that Callaghan made a trip to California. I did not see him get on the train. Speer told me he went to California and told me to make out a check for his traveling expenses. I was not in California when Callaghan interviewed Chaplin and do not know of my own knowledge that he ever did interview Chaplin. I only know what Speer told me, and correspondence we had with him. I have seen Callaghan's signature, but I do not know that I have ever seen him write it. All that I know about this California trip of Callaghan's and his interview with Chaplin is something that Callaghan told or wrote, or something that Speer told me as auditor of the Essanay. Defendant's exhibits 135 to 146, inclusive, are checks made out to Speer or to currency. I know of my own knowledge that Speer used that money to go to New York. I did not see him get on the train. I knew he was in New York because we had wires from him and correspondence. I did not see him go to New York. I do not know where else he went besides New York; all that I know about these exhibits (defendant's exhibits 135 to 146 inclusive) is that Speer told me that these expenditures were incurred in the Chaplin suits. I know nothing of the bills and letters from Seabury and Rosenfeldt, or about the contents of the bills, except that the statements were rendered to us. I just know that I received a bill. For instance, in defendant's exhibit 18 Seabury writes that he expended \$9.12 in the Chaplin suit, but I just took the statement for what it was and paid it. I don't know anything about these exhibits from 1 to 146, except whatever occurred in the ordinary course of business and the statements to verify. I received all these statements and letters and they were O. K.'d by Speer for payment. He would not always initial them. I would ask him if it was all right to pay and he would say, 'Yes, just make out a check for it.' I guess I did that every time. I got Speer's O. K. every time before I made out the check. The O. K. was not in writing, but was given verbally. He told me what the expenditure was for and what it was to be charged to. That is all I know about it."

At the conclusion of all the testimony of Mrs. Harris the trial attorney for the plaintiff made the following motion:

"I move to strike every exhibit from the record except checks on the ground that they have been identified by a witness who knows nothing about them, except by hearsay, and the fact that Mr. Speer is in the courtroom is a presumption that the proper evidence is available."

The court denied the motion and held that the exhibits properly were admissible in evidence.

Adam testified in regard to certain exhibits which he prepared and certain exhibits which he received in the regular course of business while he was auditor of the defendant.

Anderson, who was the only witness called on behalf of the plaintiff, testified in substance as follows:

"Except for defendant's exhibits 9 and 11, I had never had a close look at defendant's exhibits 1 to 146 inclusive, until I looked at them in your (the trial attorney for the plaintiff) office on Friday. The first time I saw them at all was when they were produced here at the trial. The first time that I knew that Chaplin litigation had been settled, and the first time that I heard anything about it was when Speer testified here in court. I think he testified Friday. I was never present at a conference with Speer and Seabury at the Republican Club in New York. There was a controversy over the picture 'Carmen.' The Essanay suit against Chaplin was for damages caused by Chaplin breaking his contract with the Essanay. Chaplin was receiving \$1250 a week as pay under his contract, which was the first contract we had with Chaplin. The second contract, which we claimed that he broke, was for \$1250 a week and \$10,000 bonus for each picture. He was to make ten pictures, but made only six and we were suing for the value of four. His next contract was with a firm called the Mutual. As I understand it, Chaplin filed a counterclaim against the Essanay for damages caused by our releasing 'Carmen.' I never saw the complaint or anything, only what Speer told me. I understand there was a counterclaim for damages for releasing 'Carmen,' jeopardizing his artistic reputation. The first time I heard about the Chaplin suit or litigation based on the picture 'Triple Trouble' was in this courtroom. The first time I ever heard about Chaplin's counterclaim based upon 'Chaplin Revue' was when Governor Deneen spoke about it in this courtroom. March 27, 1919, was the date of my conversation with Speer concerning the sale of the pictures. I paid the Essanay all my share of the expenses, costs and attorneys' fees in the Chaplin litigation up to the time of that contract. (Plaintiff's exhibit 6.) I don't know the exact amount that I paid as my share of the expenses in the Chaplin litigation incurred before May 27, 1919, but I think that my share was around \$15,000 or \$16,000, which I think was on the books at the time when we went into the contract. I do not know anything about the pictures 'Triple Trouble' and 'Chaplin Revue,' and I don't know whether or not they had been put together on May 27, 1919. I saw 'Triple Trouble' advertised in the periodicals in 1920 or 1921, I don't recall the exact date."

From the exhibits it appears that with the exception of an item of \$1600 paid to Speer for traveling expenses in connection with the Chaplin litigation, and an item of \$693 paid to Callaghan

for expenses in connection with the Chaplin litigation, the remainder of the total expenditures of \$47,881.29 was paid to Seabury, Massey & Lowe, Mueller & Wright, and Steuer for services, expenses and costs as attorneys for the defendant in the Chaplin litigation.

The contentions of counsel for the plaintiff, which are numerous, may be grouped under three headings: First, general objections to the admissibility of the evidence; second, specific objections seeking to impeach or discredit certain items of the expenditures; third, that the verdict is manifestly against the weight of the evidence.

Under the general objections counsel for the plaintiff contend that the statements and bills of the attorneys and Callaghan have not been proved properly; that the statements and bills should have been proved by the testimony of Seabury, of the firm of Seabury, Massey & Lowe; by Wright and Mueller; by Steuer and by Callaghan; that the reasonableness of the statements and bills of the attorneys and Callaghan and Spoor has not been shown; that letters of Seabury, Seabury, Massey & Lowe, a letter of Wright, and a telegram signed "Shogren" were not admissible in evidence.

Counsel for the defendant maintain that in view of the agreement on the trial that the exhibits should be considered as having been identified and offered in evidence, counsel for the plaintiff cannot now contend that the exhibits have not been proved properly. If only the agreement was in the record, the contention of counsel for the defendant would be correct; for when considered in connection with the identification of exhibits 1 and 2 by Mrs. Harris, the word "identified" as used in the agreement undoubtedly was intended to mean that all of the exhibits should be considered as having been explained and authenticated sufficiently to establish prima facie proof of their admissibility in evidence. This meaning

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which we have ascribed to the word "identified" as used in the agreement, is in accord with the following definition of the word "identify" given by Webster's New International Dictionary: "To prove the same (with something described, claimed or asserted)." But the objections of the trial attorney for the plaintiff and the colloquies between him and the court after the agreement was made, indicate that the trial attorney for the plaintiff did not appreciate the full force and effect of the word "identified" as used in the agreement. And the court allowed him to enter a "general objection to all of Seabury's bills and all bills of strangers to the record." In this state of the record, and also in view of all of the testimony of Mrs. Harris and Adam, we think that a fair interpretation of the situation would be that the trial attorney for the plaintiff agreed, in effect, that the auditors of the defendant would testify that all of the exhibits about which no testimony was given, constituted records of the defendant, which belonged to the account known as "Chaplin Legal Expenses," and which were kept in the regular course of business by the auditors under the direction of Speer.

In this view counsel for the plaintiff have the right to question the sufficiency of the evidence relating to the exhibits. No objection is made by counsel for the plaintiff in regard to the proof of the checks paid to the attorneys for services, expenses and costs in the Chaplin litigation. The objections of counsel for the plaintiff relate to the bills and statements of the attorneys. These bills and statements, counsel for the plaintiff contend, are hearsay evidence since the attorneys did not authenticate them. Even so we do not perceive how the plaintiff was prejudiced. The bills and statements were merely corroborative evidence to explain the purpose for which the checks were paid. The checks were the essential evidence of the expendi-

tures of the defendant under the provision in the contract in question for "cost and expense in the prosecution and defense" of the Chaplin litigation.

We are of the opinion, however, that the bills and statements were not hearsay evidence, and were admissible without the authentication of the attorneys and Callaghan. The determination of this question depends on the relationship between the defendant and Anderson, the assignor of the plaintiff. The question of relationship between the defendant and Anderson has not been discussed by counsel for the plaintiff. From their argument in this respect and the authorities cited in support of their argument, it would appear by implication that counsel for the plaintiff considered the relationship between the defendant and Anderson as that of strangers. In our opinion the defendant and Anderson were joint adventurers. By the terms of the contract in question they were engaged in a joint adventure in connection with the Chaplin litigation, in which each was to share in proportionate amounts the profit and expense of the Chaplin litigation. The question whether a corporation may engage in a joint adventure is not involved, as both the defendant and the plaintiff are relying upon the validity of the contract, the legal effect of which in our opinion constitutes the plaintiff and the defendant joint adventurers. It may be stated that in Illinois the rule is that a corporation cannot enter into a partnership. Bishop v. American Preservers Co., 157 Ill., 284, 313; Rogers v. Jewell Belting Co., 184 Ill., 574, 577. But, according to Corpus Juris, 14A, p. 293, "notwithstanding a corporation has no power to enter into a partnership, it may under a joint venture with others transact any business which is within the scope of its legitimate powers and thereby become liable on account of the fiduciary relation thus assumed."

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The rule is well settled in Illinois that joint adventures, although not strictly partnerships, closely partake of the nature of partnerships, and are governed by the rules and principles relating to partnerships. Slater v. Geo. M. Clark & Co., 68 Ill. App. 433, 437; Null v. Parsons, 145 Ill. App. 436, 438; Edwards v. Hudson, 165 Ill. App., 521, 528. To the same effect are 15 R. C. L., p. 500; 23 Cyc, p. 453.

The general rule in regard to the admissibility in evidence of partnership books against partners, as stated by Ruling Case Law, is "that partnership books are admissible in evidence for the purpose of showing the state of the partnership affairs, even when the entries are made by one partner alone, provided that the partners have access to the books and an opportunity to object to the entries in question." 20 R.C.L., section 153, p. 934. To the same effect is 30 Cyc, 743. It is also the rule that in case all the partners have had free access to the books, the entries in the books will be deemed accurate and the presumption will arise that they were known to each partner. 30 Cyc, p. 447.

In the case of Stuart v. McKichan, 74 Ill., 122, in stating the rule in regard to the presumption of the correctness of partnership books as between partners, the court said (p. 124):

"When the cause was before the master the books of account and vouchers were produced before him, and before the court also, in considering the exceptions. Those books are presumed to contain a true history of the business, and a true record of the transactions between these partners."

In the case of Allen v. Coit, 6 Hill (N.Y.), 318, speaking of partnership books, the court said (pp. 321, 322):

"As to the entry in the books of the defendants, they must all be taken to have had constructive knowledge of it; and it appears they probably had knowledge in fact. As members of the firm, they were affected by the entry, whether made by themselves or their agent Thornton. They must moreover be presumed to have understood its true import. Indeed, the knowledge of their agent was, in this respect, their own knowledge; and the judge was right in allowing him to explain the meaning of the

entry, if there was any thing in it which could be considered obscure."

We are of the opinion that the rules relating to partnerships, which are also the rules governing joint adventures, are sufficiently broad to justify the admission of the bills and statements in the case at bar on the proof made by the auditors of the defendant, together with the testimony of Speer. And we are of this opinion notwithstanding that the matter of the Chaplin litigation was conducted exclusively by the defendant without the active participation of Anderson. The clear implication of the contract in question is that Anderson's co-adventurer, the defendant, or rather Speer, who in fact was the defendant, was to conduct the matter of the Chaplin litigation either as Anderson's co-adventurer or in the nature of Anderson's agent. But as the law of partnership is a branch of the law of agency, the functions, rights and duties of partners in a great measure comprehend those of agents and the general rules of law applicable to agents likewise apply to partners. 20 Ruling Case Law, section 94, p. 882. It is the duty of an agent to keep accounts of the subject matter of the agency as to both receipts and disbursements, and to render to his principal a full and complete statement of his dealings, and of the state of the accounts, supported by proper vouchers. 2 Corpus Juris, section 404, p. 738.

Anderson testified that the first time that he ever saw the exhibits was at the trial. That is immaterial. He had the legal right to inspect the books and accounts at any time during the progress of the Chaplin litigation. There is no evidence that he was ever denied access to the books and accounts. He therefore must be regarded as having approved by acquiescence of the books and accounts. Turner's Executor v. Turner, 98 Md. 22, 31. Furthermore, the record shows that all of the exhibits

were in the possession of counsel for the plaintiff from an adjournment of the court on Friday until court convened on the following Monday, and that Andersen examined the exhibits during that time.

Counsel for the plaintiff urge many specific objections to the exhibits. The basis of the objections is the internal evidence of the exhibits themselves. No evidence whatever was offered or introduced on behalf of the plaintiff directly to impeach or discredit any of the exhibits. The only testimony on behalf of the plaintiff was that of Andersen, and his testimony does not relate specifically to the exhibits.

The first specific objection of counsel for the plaintiff to the exhibits is in regard to the word "retainer," which appears on some of the exhibits and which was used to designate a monthly payment to Seabury, Massey & Lowe for legal services in connection with the Chaplin litigation. Counsel for the plaintiff contend that we should take judicial notice that "there is no such thing as a general retainer billed monthly for a single particular law suit;" that we should take judicial notice that retainers are of two kinds only - "Special retainers given to secure the services of a particular attorney in a particular case, the retainer fee being paid, once and for all, when the attorney is engaged;" and "General retainers given to secure the services of a particular attorney in any and all matters which might arise, having no reference to any particular case, the retainer fee being paid monthly or yearly, inasmuch as the engagement is indefinite in duration." Counsel for the plaintiff then argue that "It would be unreasonable to believe that the defendant would enter into such a monthly 'retainer' contract with Seabury, Massey & Lowe."

were in the possession of counsel for the plaintiff from the
 judgment of the court on Friday night appeared on the
 following day, and that defendant retained the custody of the
 that day.

General for the plaintiff was many possible objec-
 tions to the exhibit. The basis of the objection is the lack
 and evidence of the exhibit themselves. He evidence further was
 offered or introduced on behalf of the plaintiff directly to the
 basis or otherwise any of the exhibit. The only testimony on
 behalf of the plaintiff was that of defendant, and his testimony
 does not relate specifically to the exhibit.

The first possible objection of counsel for the plain-
 tiff is the exhibit is in regard to the word "retainer," which
 appears in some of the exhibits and which was used to designate
 a lawyer's agreement to defend, namely a law firm's services
 in connection with the specific litigation. General for the plain-
 tiff contends that he should have judicial notice that "there is no
 such thing as a general retainer bill or receipt for a single ser-
 vicer's fee only;" that he would take judicial notice that re-
 tainer fee of two kinds only - "General retainer given to secure
 the services of a particular attorney in a particular case, the
 retainer fee being paid once and for all, when the attorney is
 retained;" and "General retainer given to secure the services of a
 particular attorney in any and all matters which might arise,
 nothing no reference to any particular case, the retainer fee being
 paid monthly or yearly, however as the defendant is interested
 in neither." General for the plaintiff then argues that it
 would be unreasonable to believe that the defendant would never
 have ever a possible "retainer" agreement with himself, namely a

The answers to these contentions of counsel for the plaintiff are that the real issue is whether monthly payments in fact were made by the defendant to Seabury, Massey & Lowe for legal services, and not by what name the payments were designated; that there is evidence on behalf of the defendant that the payments were made, and that there is no evidence on behalf of the plaintiff that they were not made; and that even if we should take judicial notice that the word "retainer" has only the two meanings which counsel for plaintiff have indicated, we would not be justified to infer from that fact alone that the evidence on behalf of the plaintiff that the monthly payments were made to Seabury, Massey & Lowe was not true.

Counsel for the plaintiff further contend that the monthly "retainer" which was paid to Seabury, Massey & Lowe, included legal services for other matters besides the Chaplin litigation.

This contention of counsel for the plaintiff is not based on any evidence. On cross-examination of Speer, counsel for the plaintiff brought out the fact that Seabury, Massey & Lowe represented the defendant in other matters than the Chaplin litigation; but Speer stated that it was not his understanding that the retainer included legal services for other matters than the Chaplin litigation. There is no evidence on behalf of the plaintiff that the monthly "retainer," which was paid to Seabury, Massey & Lowe, included legal services for other matters than the Chaplin litigation.

Counsel for the plaintiff contend "That fees and disbursements, paid to Mueller & Wright in 1918 were not solely for the Chaplin litigation but included other matters." No evidence was offered by the plaintiff in this respect, and there is nothing in the evidence on behalf of the defendant which, in our opinion,

The answer to these contentions of counsel for the Plaintiff are that the real issue in whether money was paid in-
fact was made by the defendant to Gault, Gault & Co. for in-
terest, and not by what name the payments were made;
that there is evidence on behalf of the defendant that the payments
were made, and that there is no evidence on behalf of the Plaintiff
that they were not made; and that even if we should take the
evidence that the word "retainer" has only the one meaning which
counsel for Plaintiff have indicated, we would not be justified
to infer from that fact alone that the evidence on behalf of the
Plaintiff that the money was paid is correct, because it
does not say so.

Counsel for the Plaintiff further contend that the
word "retainer" which was used in the evidence, means a loan,
because legal services for other cases are between the Plaintiff
and the defendant.

This contention of counsel for the Plaintiff is not
based on any evidence. On cross-examination of Gault, counsel for
the Plaintiff brought out the fact that Gault, Gault & Co. rep-
resented and defended in other matters than the Gault litigation.
Gault, Gault & Co. stated that it was not his contention that the
retainer included legal services for other matters than the Gault
litigation. There is no evidence on behalf of the Plaintiff
that the word "retainer" which was used in the evidence, means a
loan, because legal services for other matters than the Gault
litigation.

Counsel for the Plaintiff contend that the word "re-
tainer" has in English & French in 1818 the same meaning for
the Gault litigation as it has in other matters. An answer
was given to the Plaintiff in this regard, and there is nothing
in the evidence on behalf of the defendant which, in our opinion,

would justify the conclusion of counsel for the plaintiff.

Counsel for the plaintiff contend that a telegram referred to as the "Shogren telegram" was not admissible in evidence. This telegram, which was sent to Alfred Wright, Los Angeles, California, from Chicago, is as follows: "Mr. Speer out of city. Letter will receive attention on return few days. R. Shogren, Secretary." In the order in which the exhibits were introduced this telegram follows a letter from Wright to Speer and was probably in answer to that letter. The telegram was never offered by the defendant as a separate item of evidence. The objection of the trial attorney for the plaintiff to the telegram was made after the agreement had been entered into between the trial attorneys that all of the exhibits should be considered as having been identified and offered in evidence. Granting, for the sake of argument, that the telegram was admitted in evidence improperly, the harmless, insignificant nature of the telegram is so obvious that we cannot believe that counsel for the plaintiff seriously contend that the error would constitute reversible error.

Counsel for the plaintiff maintain that "the remittance advices were not admissible in evidence."

The evidence shows that when a check was made out an original voucher and a duplicate voucher were also made out. The original voucher was sent with the check. The duplicate voucher was kept in the files of the defendant. Counsel for the plaintiff contend that the remittance vouchers were self-serving statements. We think that the contention is without merit. The checks constituted the evidence of the expenditures and the checks are not objected to by counsel for the plaintiff. The remittance vouchers were not evidence of any expenditures, but were merely made out as a matter of bookkeeping. Furthermore, the remittance vouchers were not self-serving statements as between strangers, but were admissible in

evidence as part of the records relating to the joint adventure in which the defendant and Anderson, the plaintiff's assignor, were co-adventurers.

Counsel for the plaintiff contend that "the alterations, notes and arithmetic" which appear on some of the exhibits should have been explained.

A sufficient answer to this objection is that the objection was not made on the trial. The rule requiring an explanation of alterations on a document offered in evidence, is that if the alterations are material, the party offering the document may be required to explain the alterations satisfactorily to the court before the document will be admitted in evidence. Gage v. City of Chicago, 225 Ill., 218, 220.

Counsel for the plaintiff contends that certain letters written to the defendant by Seabury, Seabury, Massey & Lowe, and Wright, should not have been admitted in evidence for the reason that the signatures to the letters were not proved.

The contents of all of the letters show that they relate to the Chaplin litigation. For that reason we think that the letters were admissible in evidence as part of the records in the joint adventure in which the defendant and Anderson, the assignor of the plaintiff, were interested as co-adventurers.

The items in regard to the expenses of Speer and Callaghan are objected to by counsel for the plaintiff.

We think that the testimony of Speer and Mrs. Harris in regard to those items justified their allowance. There is no evidence in the record contrary to the testimony of Speer and Mrs. Harris.

It is objected by counsel for the plaintiff that the jury were allowed to have the exhibits; that some of the items claimed as part of the set-off of the plaintiff were checked in red ink; that some of the exhibits contained items that did not consti-

affirmation as part of the process relating to the joint agreement in
 which the defendant was involved, and which was made, and

consequently,

inasmuch as the defendant admitted that the affirma-
 tion, which was made, was made in the presence of the defendant,
 which was made, and

a sufficient amount of this evidence is that the

affirmation was made on the 1st. The defendant was not

at the time of the making of the affirmation, and it is

the defendant's duty to prove that the defendant was not

present at the time of the making of the affirmation, and it is

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the defendant's duty to prove that the defendant was not

present at the time of the making of the affirmation, and it is

tute part of the claim of set-off of the plaintiff; that the jury were confused by the mass of the exhibits.

The answer to these objections is that the exhibits were given to the jury at the explicit request of the trial attorney for the plaintiff. Furthermore, in regard to the items not claimed as part of the defendant's set-off, it was expressly agreed in the presence of the jury that those items should not be allowed; and the verdict of the jury indicates that they were not allowed.

Counsel for the plaintiff maintain that "the jury had no right to disregard the uncontradicted testimony of Anderson." The testimony of Anderson was not directly contradicted, but his testimony was contrary to the evidence on behalf of the defendant. We attach little weight to Anderson's testimony. His testimony was indefinite and unconvincing. On the question whether he had paid all of his share of the expenses, costs and attorney's fees in the Chaplin litigation, he stated that he had, but did not know the exact amount. In answer to the question whether he could state the approximate amount he replied, "I think the approximate amount was something -- my share of around fifteen or sixteen thousand dollars, I think that was on the books at the time when we went into that contract." Anderson did not produce any checks or receipts to corroborate his testimony.

Counsel for the plaintiff contend that "the defendant's unauthorized settlement of the Chaplin litigation released the plaintiff, as Anderson's assignee, of its obligation to pay 48 per cent of the cost and expense of the prosecution and defense thereof;" that "authority to prosecute or defend does not include authority to settle."

We do not think that the settlement of the Chaplin litigation by the defendant was unauthorized. In our opinion the defendant had implied power under the contract in controversy,

either as agent or co-adventurer of Anderson, the assigner of the plaintiff, to settle the Chaplin litigation. As a co-adventurer of the defendant, Anderson was entitled to take part in the management of the enterprise. 30 Cyc, p. 446. However, he left the entire management of the business to the defendant and must be considered as having acquiesced in the settlement.

It is contended by counsel for the plaintiff that "the cross examination of Spear by the trial attorney for the plaintiff was unduly restricted."

It is hardly necessary to cite authorities in support of the familiar rule that the latitude to be allowed on cross-examination rests largely in the discretion of the trial court, and that a judgment will not be reversed unless it is clear that the discretion has been abused. Brannen v. Cartersville Coal Co., 241 Ill., 610, 622; Chicago City Ry. Co. v. Creagh, 257 Ill., 400, 402, 403. In the case at bar we do not think that the court abused its discretion.

The final contention of counsel for the plaintiff is that "the expenses of the 'Garsen' litigation were not proper matter for set-off," for the reason that the suit in respect of the 'Garsen' matter had been dismissed before the contract in controversy was entered into; and that "the contract covered only such suits as were pending on the date" of the contract.

The clause of the contract relied on by counsel for the plaintiff is as follows: "Cost and expense in the prosecution and defense of any and all suits at law now existing and of date of May 27th or previous thereto in the Federal or State courts between Charles Chaplin and Essanay Film Mfg. Co. (the defendant.)" In the contract as written there is no comma between the words "existing" and "date," but counsel for the plaintiff contend that there should be and that with such punctuation

the matter was discussed at the meeting of the Board of Directors of the American Red Cross, held on June 1, 1917, at New York City. The Board of Directors of the American Red Cross, held on June 1, 1917, at New York City, discussed the matter.

[illegible]

... ..

* 1997-1998 7/1/97 11:14 AM

It is hereby recommended to the Board of Directors that the proposed amendments to the Charter be approved.

— 1992 —

[Faint, illegible text]

[illegible]

... 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643,

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Figure 1. The effect of the concentration of the monomer on the polymerization of 2-methyl-2-butene initiated by TiCl_4 in the presence of C_6H_6 at -78°C . The concentration of TiCl_4 was 1.0×10^{-2} mole/liter, and the concentration of C_6H_6 was 0.5 mole/liter. The polymerization was carried out for 10 min.

အထက်ဖော်ပြပါ အချက်များကို မှည့်ဆိုရန် ရည်ရွယ်ချက်ဖြင့်

at 11:00 a.m. on 11/11/11. The subject was found in the same position as above.

This is the reverse of the "discovery" fiction you may find

10. The number of days in the month of August is 31.

The following information was obtained from the records of the

U.S. Bureau of Census, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640,

...the

THE UNIVERSITY OF CHICAGO

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

1. The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the United States in the State of California:

State of New York

1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765

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There are some "wild" and "unstable" people in the world who are not to be trusted.

1777-1778

the contract contemplates only Chaplin litigation that was pending on the date of the contract. We do not adopt the construction which counsel for the plaintiff contend should be given to the clause in question. In our opinion the clause included all of the Chaplin litigation either pending or disposed of on the date of the contract.

For the reasons stated the judgment of the trial court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.

17
⑤
to court
granted Oct 8-75
Returned May 6-76.
Abstract only
240 I.A. 677

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the seventh day of
April, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On

JUL 27 1925 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to wit:

Richard J. Collins,

appellant,

vs.

Appeal from the Circuit Court

of Knox County.

Harry E. Parker, Jr., Minnie

M. Ohls and Charles L. Ogden,

appellees,

240 I.A. 677

Jett, J.

Richard J. Collins, appellant, filed a bill to foreclose a mortgage on certain real estate in the City of Galesburg, Knox County, Illinois. Appellee Charles L. Ogden, answered, and filed a cross bill by leave of the court. All defendants were defaulted except Ogden. The cause was referred to the Master in Chancery. The Master filed his report and recommended that the cross bill of Charles L. Ogden be dismissed for want of equity; that the original bill filed by Richard J. Collins should be dismissed for lack of proof of ownership of the instrument sued on. Objections were filed to the report of the Master and overruled, and said objections were allowed to stand as exceptions to the said report of the Master. The chancellor entered a decree dismissing the original bill filed by the said Richard J. Collins for want of equity and also dismissed the cross bill of Charles L. Ogden for the same reason. Richard J. Collins appealed from the order dismissing his bill.

For the purpose of this opinion the appellant hereinafter shall be called complainant, and as no one claims to have any interest in this proceeding on the part of appellees except appellee Ogden, he will be referred to as defendant.

It appears that Richard J. Collins, complainant, on May 12, 1923, filed his bill in the circuit court of Knox county alleging that on or about July 10, 1897, Kate L. Parker, late of said county, and Harry E. Parker, Jr., her husband, being indebted to O. F. Price in the sum of \$1,000.00, made and delivered their promissory note of that date for said sum, due two years after the date thereof with interest at the rate of seven per cent (7%) per annum. To secure

Richard V. Collins, Plaintiff,

vs.

James W. Smith, Defendant.

of Knox County.

Harry E. Parker, Jr., Attorney

for Plaintiff.

vs.

Page 13.

Richard V. Collins, Plaintiff, filed a bill to foreclose a

mortgage on certain real estate in the city of Chicago, Knox County,

Illinois. Answer, and filed a cross

bill by leave of the court. All witnesses were defaulted except

James W. Smith. The court was referred to the Master in Illinois. The Master

filed his report and recommended that the cross bill of J. W. Smith

be dismissed for want of equity; that the original bill filed

by Richard V. Collins be dismissed for want of equity and that

all of the instrument be set aside. Objections were filed to the report

of the Master and overruled, and said objections were allowed to

stand as exceptions to the bill of the Master. The exceptions

were a decree dismissing the original bill filed by the bill

Richard V. Collins for want of equity and also dismissed the cross

bill of James W. Smith for the same reason. Richard V. Collins

appealed from the order dismissing his bill.

For the purpose of this opinion the following facts shall

be called complainant, and as no one claims to have any interest in

this proceeding on the part of appellee except appellee's wife, as

will be referred to as defendant.

It appears that Richard V. Collins, complainant, on May 15,

1895, filed his bill in the district court of Knox County, Illinois,

that on or about July 10, 1894, said Harry E. Parker, late of said county,

and Harry E. Parker, Jr., her husband, being indebted to C. F. Smith

in the sum of \$1,000.00, made and delivered their promissory note

of that date for said sum, and two years after the date thereof

with interest at the rate of seven per cent (7%) per annum. It

240 I.A. 677

said note the said Kate L. Parker and Harry E. Parker, Jr., executed a mortgage and conveyed to O. F. Price certain real estate situated in Knox county, namely, Lot 1, Block 10 in Gale's Second Addition to the City of Galesburg; that said mortgage was duly acknowledged and entered of record. Default having been made in the payment of the note, complainant, possessor of the note and mortgage filed his bill of complaint with the result as above indicated. .

It appears that Charles L. Ogden, defendant, claimed to be the owner and possessor of the lands and premises described in the mortgage given to secure the said note and that he contested the right of the complainant to a decree of foreclosure. His cross bill was dismissed, and he did not appeal from the order dismissing it. He argues only these questions in opposition to the contention of complainant.

I. Does the possession of the note and mortgage by appellant, and his introduction of them in evidence without any explanation as to when, where, from whom and for what consideration, if any, he acquired them, constitute a prima facie case upon which he can sustain his bill?

2. Has the Statute of Limitations run against the note and mortgage?

3. Was error committed in refusing appellant's motion for leave to re-open the case for the purpose of introducing additional testimony?

The principal question involved in this proceeding is as to whether or not it is shown by the evidence that the complainant is a legal holder and owner of the note secured by the mortgage sought to be foreclosed. Complainant contends that he became the owner and possessor of said note by the indorsement of the same to him by E. B. Wade.

The abstract shows that the following stipulation was entered into:

"It is hereby stipulated and agreed by and between the said complainant and the defendant, Charles L. Ogden, by their respective

said note the said Kate L. Parker and Mary L. Parker, Jr., executed a mortgage and conveyed to O. F. Price certain real estate situated in Knox county, namely, Lot 1, Block 10 in said second addition to the City of Galveston; that said mortgage was duly acknowledged and entered of record. Default having been made in the payment of the note, complainant, possessor of the note and mortgage filed his bill of complaint with the result as above indicated.

It appears that Charles L. Ogden, defendant, claimed to be the owner and possessor of the lands and premises described in the mortgage given to secure the said note and that he contested the right of the complainant to a decree of foreclosure. His cross bill was dismissed, and he did not appeal from the order dismissing it. He argues only these questions in opposition to the contention of complainant.

1. Does the possession of the note and mortgage by complainant constitute an introduction of this in evidence without any limitation as to when, where, from whom and for what consideration, if any, he acquired them, constitute a prima facie case upon which he can sustain his bill?

2. Has the statute of limitations run against the note and mortgage?

3. Was error committed in refusing appellant's motion for leave to re-open the case for the purpose of introducing additional testimony?

The principal question involved in this proceeding is as to whether or not it is shown by the evidence that the complainant is legal holder and owner of the note secured by the mortgage sought to be foreclosed. Complainant contends that he became the owner and possessor of said note by the indorsement of the name to him by M. D. Webb.

The exhibit shows that the following stipulation was entered into:

"It is hereby stipulated and agreed by and between the said complainant and the defendant, Charles L. Ogden, that their respective

solicitors, that Laura S. Price and Laura Price Moore named on the back of the note sued on in said cause and secured by the mortgage therein sought to be foreclosed was one and the same person.

It is further stipulated and agreed by and between the said parties, that the said note was assigned and delivered by the legal holders and owners thereof to one E. B. Wade, who is named on the back of said note as the assignee thereof, and that the said E. B. Wade thereby became and was the legal holder and owner of said note.

It is further stipulated and agreed that the name "E. B. Wade", appearing on the back of said note, in the right-hand corner thereof, is in the hand-writing of E. B. Wade, and that the original note and mortgage, together with all indorsements thereon, shall be considered as substituted for the copies thereof heretofore offered in evidence by counsel for complainant, subject to the right of defendant Ogden to object to such offer as hereinbefore observed in the record".

The record discloses that the note and mortgage in question were in the possession of complainant and were offered and admitted in evidence. It is the contention of complainant that the possession of the note is prima facie evidence that he is the owner and holder thereof. *Ransom vs. Jones*, 1 Seam. 293.

In the case of *Curtis vs. Martin*, 20 Ill. 557-577, the court among other things said:

"The ninth instruction was properly given as the principle that the holder of a note, when there are no circumstances of suspicion of male fides, is presumed to be the legal holder and owner. This principle is too familiar to require discussion or authority."

In the case of *Jewett vs. Cook*, 81 Ill. 263, the court said:

"Baldwin holds a note of Mrs. Stark given for the goods, now, or of whom he obtained it, or what he paid for it, is not shown. We cannot, however, presume he obtained the note dishonestly, without proof, neither can it be presumed he did not pay value for, or did not own it; but, on the other hand the possession of the note was prima facie evidence of ownership."

In *First National Bank of Princeton vs. Ficklin*, 185 Ill. App. 381-382, the court said:

"Where the execution of a note is not denied, the note when offered in evidence makes a prima facie case for plaintiff, including the fact of plaintiff's ownership."

solicitors, that Lewis S. Price and Lewis Price were named on the back of the note and on its back was secured by the mortgage.

It is further stipulated and agreed by and between the said parties, that the said note was assigned and delivered to the legal holder and owner thereof to one E. E. Price, who is named on the back of said note as the assignee thereof, and that the said E. E. Price thereby became and was the legal holder and owner of said note.

It is further stipulated and agreed that the name "E. E. Price" appearing on the back of said note, in the right-hand corner thereof, is in the hand-writing of E. E. Price, and that the original note and copy, together with all instruments thereon, shall be considered as substituted for the copies thereof heretofore offered in evidence by counsel for complainant, subject to the right of defendant to object to such offer as inadmissible on the facts.

The record shows that the said note and copy were introduced in evidence in the possession of complainant and were offered and admitted in evidence. It is the contention of complainant that the possession of the note is prima facie evidence that he is the owner and holder thereof. *Lewis v. Jones*, 120 N. H. 233.

In the case of *Wright v. Lewis*, 10 N. H. 557-558, the court among other things said:

"The ninth instruction was properly given as the principle that the holder of a note, when there are no circumstances of exception of legal title, is presumed to be the legal holder and owner. This principle is too familiar to require discussion or authority."

In the case of *Lewis v. Jones*, 120 N. H. 233, the court said: "Bellevue holds a note of Mrs. Price given for the sum of \$100, or of whom he obtained it, or what he said for it, is not shown. He cannot, however, presume he obtained the note dishonestly without proof, neither can it be presumed he did not pay for it or did not own it; but, on the other hand, the possession of the note was prima facie evidence of ownership."

In *First National Bank of Princeton v. Bellin*, 188 N. H. 301-302, the court said:

"Where the execution of a note is not denied, the note when offered in evidence makes a prima facie case for plaintiff, including the fact of plaintiff's ownership."

The execution of the note being admitted by the answer of the defendant and there being no plea, verified or otherwise, denying the assignment of the note, complainant was not required to prove the maker's or payee's or assignee's signature, but the assignment thereof was, in the absence of such plea, admitted. *Astry vs. Fox River Distilling Company*, 182 Ill. App. 340.

The right to the possession and beneficial interest in an unendorsed negotiable paper may pass by manual delivery of the paper, and in the absence of testimony tending to disapprove that the notes were delivered the presumption will obtain that one in the possession of such paper came rightfully into possession. *Martin vs. Martin*, 174 Ill. 371-374.

There is no evidence that tends to show that the complainant did not come into possession of the note and mortgage honestly.

It is conceded that E. B. Wade had been the legal holder and owner of the note in controversy and that his signature appears on the back thereof. The following also appears on said note:

"For a valuable consideration I hereby assign, transfer & sell all my right, title and interest in and to the within note and the mortgage which secures this note to Richard J. Collins, without recourse to me.

Dated Dec. 2/10.

Int. pd. to Jan. 10/09"

and at the right of the assignment appears the signature of E.B. Wade.

A photographic copy of the note shows the exact situation of the endorsements. The defendant insists that the signature of Wade was not to the assignment but simply to the statement that interest was paid to Jan. 10/09.

It is the contention of complainant that on account of the crowded condition by reason of the indorsements on the instrument, there was no room on the part of the note, where the assignment to him was written for the signature of Wade and that Wade wrote on the bottom of the next column and immediately opposite the written assignment his signature including the date to which the interest was paid.

When a signature is so placed upon an instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser. Section 17, Sub.-Sec. 6,

The execution of the note being admitted by the company is
the defendant and there being no plea, verified as a matter of course,
the assignment of the note, conditional and not absolute in
form, the court is of opinion that the assignment, not the assign-
ment itself, is in the nature of a mere pledge, and that the
note itself is not assigned, but the right to receive it.

The right of the defendant to demand interest is not
unaffected by the fact that the note is not assigned, but by the fact
that in the absence of testimony to the contrary the note was
delivered to the plaintiff with the understanding that it was to be
of some other use than to pay the debt. See the case of *Smith v. Smith*,
125 Ill. 371-374.

There is no evidence that the note was assigned to the plaintiff.
It is not a matter of course that the note was assigned to the plaintiff.
It is not a matter of course that the note was assigned to the plaintiff.
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For a further consideration of this case, see the case of *Smith v. Smith*,
125 Ill. 371-374. The court is of opinion that the assignment of the note
is not a matter of course, and that the note was assigned to the plaintiff
for some other use than to pay the debt. See the case of *Smith v. Smith*,
125 Ill. 371-374.

and at the time of the assignment the assignment was not a matter of course,
but a matter of course. The court is of opinion that the assignment of the note
is not a matter of course, and that the note was assigned to the plaintiff
for some other use than to pay the debt. See the case of *Smith v. Smith*,
125 Ill. 371-374.

It is the opinion of the court that the assignment of the note is not a matter of course,
but a matter of course. The court is of opinion that the assignment of the note
is not a matter of course, and that the note was assigned to the plaintiff
for some other use than to pay the debt. See the case of *Smith v. Smith*,
125 Ill. 371-374.

Chapter 98 J. & A. Illinois Statutes, Par. 7656.

A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates, by appropriate words, his intention to be bound in some other capacity. Sec. 63, Chap. 98, Par. 7702 J. & A. Illinois Statutes.

There is no question but that E. B. Wade, the assignee and legal holder and owner of said note, placed his name upon said note, and in doing so, it is clear that he did not do so either as maker, drawer or acceptor. Therefore, under said Sec. 63, he is deemed to be an indorser, and if such indorsement is in blank (having, as is claimed by the defendant no reference to the written assignment), then under the law, complainant, being in possession thereof, is the legal holder and owner of said note.

The complainant was not required to make proof of a consideration paid for the note and mortgage in order to make out a prima facie case. First National Bank of Princeton vs. Ficklin, supra.

It is insisted by the defendant that the Statute of Limitations has run against the note and mortgage and for that reason complainant is not entitled to a decree.

The question of the right of action of complainant being barred by the Statute of Limitations although pleaded was not passed upon by the master. It is quite evident that the question was not argued before the master as he made no finding thereon. The record fails to show that any objection was made by the defendant, to the report of the master on account of a failure to make a finding on the question of the statute running against the said note and mortgage.

Section 11, of the Limitation Act must be construed in connection with Sec. 16, applicable to promissory notes, and the mortgage will not be barred until the debt is barred. Kraft vs. Holzmann, 206 Ill. 548.

If the debt has been kept alive, the Statute of Limitations is no defense to the foreclosure. Metcalf vs. Metcalf, 219 Ill. App. 96-106.

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It is a well known fact that the law of Illinois is based upon the principle of equity. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

There is no question but that the law of Illinois is based upon the principle of equity. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

The complaint was not required to state in detail the facts of the case, but it was required to state the facts in a way which would enable the court to understand the nature of the case. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

It is insisted by the defendant that the facts of the case are such that the plaintiff is not entitled to a decree. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

The question of the right of action of complaint being denied by the statute of limitations without delay was not raised upon the merits. It is quite evident that the complaint was not filed before the statute of limitations had run. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

of the statute running against the debt note and mortgage. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

If the debt has been paid, the statute of limitations is no bar to the recovery. In cases of this kind, the law is not to be applied in a mechanical manner, but the facts of the case are to be considered, and the law is to be applied in a way which is fair and equitable.

The record discloses that on December 2, 1918, the defendant Harry E. Parker, Jr., in writing, indorsed on the note, made a new promise to pay the same and signed his name to the new promise so made in writing.

If any payment or new promise to pay shall have been made, in writing, on any bond, note, etc., or other written evidence of indebtedness, within or after the said period of ten years, then an ~~an~~ action may be commenced thereon at any time within ten years after the time of such payment or promise to pay. Sec. 16, Chap. 83, Ill. Stat. J. & A. Par. 7211.

The above are the only material questions discussed by the defendant in opposition to the contention of the complainant.

Although the defendant Ogden made a claim in the court below of some interest in the real estate involved herein he has not seen fit to present any argument in support thereof in this court.

We have carefully examined the argument presented and the authorities cited and are of the opinion that the court erred in dismissing the original bill. The evidence discloses that the complainant made out a prima facie case, which has not been overcome.

The decree and order of the circuit court is reversed and the cause remanded with directions to the court to enter a decree in favor of Collins, the complainant, on the original bill.

Reversed and Remanded with Directions.

The record discloses that on December 2, 1913, the defendant
Henry M. Parker, Jr., in writing, informed on the 2nd, that a man
proposed to pay the same and signed his name to the new promise so
made in writing.

If any payment or promise to pay shall have been made, in
writing, on any bond, note, etc., or other written evidence of in-
debtedness, within or after the said period of ten years, then no ac-
tion may be commenced to recover any sum within ten years after
the time of such payment or promise to pay. Sec. 10, Chap. 92, Tit.
22, U. S. A. Stat. 1221.

The above are the only material questions discussed by the
defendant in opposition to the complaint.
Although the defendant offered a claim in the court below
of some interest in the real estate involved herein he has not seen
fit to present any argument in support thereof in this court.
The court carefully examined the argument presented and the
authorities cited and are of the opinion that the court erred in
dismissing the original bill. The evidence discloses that the com-
plainant made out a prima facie case, which has not been overcome.
The decree and order of the circuit court is reversed and the
cause remanded with directions to the court to enter a decree in
favor of Collins, the complainant, on the original bill.
Reversed and remanded with directions.

STATE OF ILLINOIS, }
SECOND DISTRICT } ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for
said Second District of the State of Illinois and keeper of the Records and Seal thereof, DO HEREBY
CERTIFY that the foregoing is a true copy of the opinion

of the said Appellate Court in the above entitled cause, of record in my office.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the
seal of the said Appellate Court, at Ottawa, this 25th
day of Aug, _____ in the year of our Lord one
thousand nine hundred and twenty five

Justus L. Johnson
Clerk of the Appellate Court.

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CHICAGO, ILL.

abstract
only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 677

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
DEC 17 1925 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:



Hannah L. Erickson,

Plaintiff in error,

vs.

Equitable Life Assurance Society
of the United States, a corporation,
Defendant in error.

Error to the Circuit Court
of Rock Island County.

240 I.A. 677

*Cartman
denied*

Partlow, J.

Plaintiff in error, Hannah L. Erickson, began suit in the circuit court of Rock Island county against defendant in error, The Equitable Life Assurance Society of the United States, upon a contract or policy of insurance on the life of Hjalmar C. Erickson. Defendant in error filed the general issue and two special pleas. A general demurrer was overruled to the two special pleas. The general issue was subsequently withdrawn, plaintiff in error elected to stand by her demurrer, judgment was rendered against plaintiff in error, and a writ of error has been prosecuted from this court.

The amended declaration charged that on March 4, 1902, defendant in error delivered to Erickson a writing, commonly called an insurance contract, which was set out in haec verba. The material provisions of the contract are sections 3 and 9, and a clause was stamped on the contract by a rubber stamp and contained some written matter.

Section 3 is as follows: "Occupation, Residence and Travel. There are no restrictions under this contract upon travel, residence, occupation, military or naval service, excepting for one year from its date of issue, during which time travel or residence in Mexico, or the Torrid Zone, and engagement, occupation or employment in blasting, mining, submarine labor, aeronautic ascensions, the manufacture, handling or transportation of inflammable or explosive substances, service upon railroad trains, or in switching or coupling cars, or on any steamboat or vessel, will render this contract void, and excepting military or naval service in war, which is at all times subject to and permitted only in conformance with the provisions of section 4 below."

to and permitted only in conformance with the provisions of section
 cepting military or naval service in war, which is at all times subject
 on any steamboat or vessel, will render this contract void, and ex-
 service upon railroad trains, or in switching or coupling cars, or
 handling or transportation of inflammable or explosive substances,
 mining, submerine labor, aeronautic ascensions, the manufacture,
 the World Zone, and engagement, occupation or employment in blasting,
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Defendant in error filed the general issue and two special pleas.
 tract or policy of insurance on the life of Hjalmer G. Erickson.

Equitable Life Assurance Society of the United States, upon a com-
 cut court of Rock Island county against defendant in error. The

Plaintiff in error, Hjalmer G. Erickson, began suit in the cir-

Barlow, J.

Defendant in error.

of the United States, a corporation,

Equitable Life Assurance Society

vs.

Plaintiff in error,

Hjalmer G. Erickson,

error to the Circuit Court

of Rock Island County.

240 I.A. 677

Section 4 is quite lengthy and related to service in time of war, which we do not think material in the ^{de}termination of the questions at issue.

Section 9 was as follows; "Incontestability. - This contract shall be indisputable after one year from its date of issue for the amount due, provided the installments are duly paid."

The contract was signed at the bottom by the president. Then followed the clause which is in controversy in this case. This clause is stamped on the policy by a rubber stamp, with a blank space for certain writing, and for convenience we will refer to it as the rubber stamp clause. It is as follows: "It is hereby provided that railroad train service in any capacity, excepting round house work, will at all times render this contract null and void unless permission is first obtained from this society and the extra premium required is paid." And below are the initials - "W. A. R."

It appears from the declaration and from the application of Erickson that at the time the policy was issued, he was employed as a wiper in a round house.

The declaration further alleged that by said contract, in consideration of the payments by Erickson of \$65.09, and a like sum on February 19 each year thereafter until February 19, 1922, defendant in error, upon surrender of the contract at that time if the same was then in force, promised to deliver to Erickson a twenty-five year 5% registered gold bond of said defendant in error for \$1000., and in event of the death of Erickson within 20 years of the date of the contract, provided all the installments had been paid, any annual installment falling due after said death should be cancelled, and the contract should mature, and upon proof of death, the defendant in error was to deliver the gold bond, or in lieu thereof, pay the equivalent of said bond in cash to Augusta J. Peterson, the mother of Erickson, if living. If she was not living at that time the payment was to be to Erickson's executors, administrators or assigns. The cash value of the bond at the death of Erickson was to be \$1300. It was further alleged that

Erickson, in his lifetime, paid all the amounts due, and performed all of the conditions of the contract; that he died on March 2, 1907, that plaintiff in error, who was his widow, made proof of death; that the contract was in full force and effect at the date of the death of Erickson and by means thereof defendant in error became liable to pay plaintiff in error the bond, or \$1300. in lieu thereof, with interest at 5% per annum from May 1, 1907.

The second count of the declaration was the consolidated common counts.

The second special plea alleged that it was provided in the contract that the privileges and conditions stated on the second and seventh pages should form a part of the contract as fully as if recited at length over the signatures affixed; that on the seventh page was the rubber stamp clause with reference to extra premium in case of railroad service, as above set forth; that contrary to the provisions of the contract, and with full knowledge thereof, Erickson, during his lifetime, entered upon railroad train service in the capacity of a locomotive fireman; that he never obtained permission of defendant in error to enter upon any railroad train service other than round house work, in which he was engaged at the time the policy was issued; that he did not pay the extra premium as provided in said rubber stamp clause; that at the time of his death, he was engaged in railroad train service other than round house work; that by reason of his failure to comply with the provisions of said instrument, the contract became null and void.

The third plea was substantially the same as the second, except that it alleged that the rubber stamp clause was a special and additional provision and condition, written in different and distinct type-writing and handwriting from the remainder of the contract.

As ground for reversal it is urged that the court improperly overruled the demurrer to the special pleas. In support of this position, it is insisted by plaintiff in error that the instrument is, in fact, a policy of insurance and should be construed according to the rules

Trickson, in his lifetime, paid all the amounts due, and performed all of the conditions of the contract; that he died on March 2, 1907, that plaintiff in error, who was his widow, made proof of death; that the contract was in full force and effect at the date of the death of Trickson and by reason thereof defendant in error became liable to pay plaintiff in error the sum of \$1300. in lieu thereof, with interest at 5% per annum from May 1, 1907.

The second count of the declaration was the consolidated common counts.

The second special plea alleged that it was provided in the contract that the privileges and conditions stated on the second and seventh pages should form a part of the contract as fully as if recited at length over the signatures affixed; that on the seventh page was the rubber stamp clause with reference to extra premium in case of railroad service, as above set forth; that contrary to the provisions of the contract, and with full knowledge thereof, Trickson, during his lifetime, entered upon railroad train service in the capacity of a locomotive fireman; that he never obtained permission of defendant in error to enter upon any railroad train service other than round house work, in which he was engaged at the time the policy was issued; that he did not pay the extra premium as provided in said rubber stamp clause; that at the time of his death, he was engaged in railroad train service other than round house work; that by reason of his failure to comply with the provisions of said instrument, the contract became null and void.

The third plea was substantially the same as the second, except that it alleged that the rubber stamp clause was a special and conditional provision and condition, written in different and distinct type-writing and handwriting from the remainder of the contract. It is found for reversal it is urged that the court improperly overruled the demurrer to the special pleas. In support of this position it is insisted by plaintiff in error that the instrument is, in fact, a policy of insurance and should be construed according to the rules

of law applicable to policies of insurance; that, under section three there was no restriction upon travel, residence, or occupation, except for one year from the date of issue, during which time certain prohibited occupations and travel would render the contract void; that under section nine the contract was to be indisputable after one year from its date, and it was in force for over 5 years; that these two sections cannot be reconciled with the rubber stamp clause but they are in conflict with it; that a contract of forfeiture will be construed most strongly against the party claiming the forfeiture; that a clause which is in the nature of an exception to the liability of the insurer will also be construed most strongly against the company; that where there is a conflict in the provisions, favor should be given that construction which gives the greater indemnity; that the provision that railroad train service will at all times render the contract null and void, means railroad train service during the space of one year from the date of the policy but not after that time; that the pleas set out a good defense only in the event that defendant in error had no knowledge that the insured was engaged in a prohibited occupation; that the pleas do not deny that the installments mentioned in the contract were fully paid, but only that the insured did not pay the extra premium required as provided in the rubber stamp clause; that it is to be presumed that section three was to have some meaning; that it was placed in the contract as an inducement to the insured to purchase; that when a policy contains an indemnifying clause in case of death entitled "Occupation, Residence and Travel" in large letters, the company should clearly state therein all of the conditions and limitations which it desired to impose upon the three subjects embraced within the title; that it would not be expected that a man of the age of the insured, whose future occupation would likely be in railroad train service, would enter into a contract which ^{would} be void if he engaged in the occupation to which he would naturally be promoted. It is also contended that the pleas do not answer the declaration for the reason that they are silent as to when the assured entered the prohibited employment,

of law applicable to policies of insurance; that, under section three
there was no restriction upon travel, residence, or occupation, except
or one year from the date of issue, within which time certain pro-
hibited occupations and travel would render the contract void; that
under section nine the contract was to be inoperative after one year
from its date, and it was in force for over a year; that these two
sections cannot be reconciled with the rubber stamp clause but they
are in conflict with it; that a contract of forfeiture will be con-
sidered most strongly against the party claiming the forfeiture; that
a clause which is in the nature of an exception to the liability of
the insurer will also be construed most strongly against the company;
that where there is a conflict in the provisions, favor should be given
that construction which gives the greater indemnity; that the provision
that railroad train service will at all times render the contract null
and void, means railroad train service during the term of one year from
the date of the policy but not after that time; that the clause set out
a good defense only in the event that defendant in error had no know-
ledge that the insured was engaged in a prohibited occupation; that
the clause do not deny that the installments mentioned in the contract
were fully paid, but only that the insured did not pay the extra premium
required as provided in the rubber stamp clause; that it is to be pre-
sumed that section three was to have some meaning; that it was placed
in the contract as an inducement to the insured to purchase; that when
a policy contains an indemnifying clause in case of death entitled
"Occupation, Residence and Travel" in large letters, the company should
clearly state therein all of the conditions and limitations which it
intended to impose upon the three subjects embraced within the title;
that it would not be expected that a man of the age of the insured,
whose future occupation would likely be in railroad train service,
would enter into a contract which he would be engaged in the occupa-
tion to which he would naturally be promoted. It is also contended
that the clause do not answer the question for the reason that they
are silent as to when the insured entered the prohibited employment,

how long he continued therein, and whether this occupation was gainful or otherwise; that the pleas are silent as to whether the death of the insured was brought about by reason of the alleged prohibited occupation.

The original contract or policy has been certified to this court for our inspection, in order that we may more easily determine the effect to be given to the various provisions in controversy. It is apparent that the policy, before the rubber stamp clause was attached, was a form which was usually used by defendant in error. There can be no doubt that under section three, without the rubber stamp clause, it was the intention of this policy that there should be no restriction either as to residence, travel, or occupation, except for one year from the date of the policy. It is also apparent under section nine that the contract was to be indisputable after one year provided the premiums were paid. If this had been the policy issued there could be no question about this case, but this was not the policy issued. The policy issued was modified by the rubber stamp clause which did not prohibit Erickson from becoming a locomotive fireman, or from engaging in any other kind of railroad train service. The restriction was that, if he did engage in railroad train service other than round house work, he was to first obtain the consent of the defendant in error and pay the extra premium required or the policy was to be null and void. The plea avers that Erickson had full knowledge of the conditions of this policy, and that in violation of its provision, he became a locomotive fireman without obtaining the consent of the defendant in error and without paying the extra premium. The averments of the plea under the demurrer must be taken as true. It is not contended that the parties did not have the right to put this rubber stamp clause on the policy. If it was put on the policy with full knowledge of the parties it is binding and thereby limited the other provisions.

It is a well known rule of law that where a contract is partly written and partly printed and there is a conflict between the written and printed provisions that the written provisions will control and

and printed provisions that the written provisions will control and written and partly printed and there is a conflict between the written It is a well known rule of law that where a contract is partly provisions. knowledge of the parties it is binding and thereby limited the other same clause on the policy. If it was put on the policy with full tained that the parties did not have the right to put the rubber of the year when the premium must be taken as true. It is not con- tendant in error and without paying the extra premium. The arguments become a locomotive fireman without obtaining the consent of the ad- ditions of this policy, and that in violation of its provision, he and void. The plea asserts that Erickson had full knowledge of the con- error and pay the extra premium required or the policy was to be null house work, he was to first obtain the consent of the defendant in and that, if he did engage in railroad train service other than round operating in any other kind of railroad train service. The restriction not prohibit Erickson from becoming a locomotive fireman, or from The policy issued was modified by the rubber stamp clause which did No question about that case, but this was not the policy issued. premiums were paid. If this had been the policy issued there could that the contract was to be indubitable after one year provided the from the date of the policy. It is also apparent under section nine either as to residence, travel, or occupation, except for one year it was the intention of this policy that there should be no restriction no doubt that under section three, without the rubber stamp clause, was a form which was usually used to defendant in error. There can be agreement that the policy, before the rubber stamp clause was attached, effect to be given to the various provisions in controversy. It is for our inspection, in order that we may more easily determine the The original contract or policy has been certified to this court occupation. the insured was brought about by reason of the alleged prohibited or otherwise; that the place or place or to which the death of how long he continued therein, and whether this occupation was lawful

prevail, also that a special clause will control over a general clause. This is the rule, not only with reference to contracts in general but this rule also applies to policies of insurance. *German Insurance Company vs. Churchill*, 26 Ill. App. 206; *Rose vs. Mutual Life Insurance Company*, 144 Ill. App. 434; affirmed 240 Ill. 45; *Morris & Company vs. Rhode Island Insurance Company*, 181 Ill. App. 500; *Sloan vs. Boston Insurance Company*, 186 Ill. App. 81; *Sloan vs. Queen Insurance Company* 186 Ill. App. 82. Authorities might be cited from other jurisdictions which amply sustain this proposition. This policy was made out on a printed form with the exception of the rubber stamp clause and blanks were left to be filled in. It appears from the pleadings that the intention of the parties was that the provisions of section three with reference to being no limitation on occupation for the period of one year should be changed, limited and modified so as to provide that, in case the insured engaged in railroad train service, he should first get permission of the defendant in error and should pay an extra premium while so engaged. This modification was made by attaching the rubber stamp clause to the policy. If there is any conflict between the printed and written provisions, the latter will govern. This provision was valid and binding, and as it was not complied with, the facts set up in the plea constituted a good defense, and the court properly overruled the demurrer to the pleas.

We do not think it is necessary to consider in detail the other points urged. The question which we have already considered goes to the merits of the whole controversy. It is claimed, however, that the pleas are not sufficient for the reason that they do not allege that defendant in error did not know that the insured was engaged in railroad train service, and that if it did know that fact, it was a waiver. The question of waiver is one which has been before the courts of this state on many occasions. There has been some confusion in the decisions as to the necessity of alleging a waiver, but in the recent case of *Feder vs. Midland Casualty Company*, 216 Ill. 552, the question was finally settled, and it is held in that case that the person who wants

prevail, also that a special clause will control over a general clause. This is the rule, not only with reference to contracts in general but this rule also applies to policies of insurance. German Insurance Company vs. Churchill, 28 Ill. App. 206; Rose vs. Mutual Life Insurance Company, 144 Ill. App. 484; affirmed 240 Ill. 45; Morris & Company vs. Rhode Island Insurance Company, 181 Ill. App. 500; Sloan vs. Boston Insurance Company, 186 Ill. App. 81; Sloan vs. Green Insurance Company 186 Ill. App. 82. Authorities might be cited from other jurisdictions which apply against this proposition. This policy was made out on a printed form with the exception of the rubber stamp clause and blanks were left to be filled in. It appears from the pleadings that the intention of the parties was that the provisions of section three with reference to being no limitation on operation for the period of one year should be changed, limited and modified as to provide that in case the insured entered in railroad train service, he should first get permission of the defendant in error and should pay an extra premium while so engaged. This modification was made by attaching the rubber stamp clause to the policy. If there is any conflict between the printed and written provisions, the latter will govern. This provision was valid and binding, and as it was not complied with, the facts set up in the plea constituted a good defense, and the court properly overruled the demurrer to the plea.

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to take advantage of a waiver must allege it in his pleadings. For that reason if the provisions of the rubber stamp clause were waived, the duty was upon the plaintiff in error to allege such waiver in her declaration and it was not the duty of defendant in error to allege it in the pleas.

It is also insisted that the pleas do not allege that the act of the insured in entering railroad train service in any way contributed to his death. It is sufficient answer to this contention to say that under the terms of the policy it was not necessary that there should be any such allegation in the plea. The rubber stamp section provided that the policy should be null and void if the insured engaged in railroad train service without the consent of the defendant in error and, therefore, it was not necessary to allege that his death was caused by such service. *Mutual Protective League vs. Langsdorf*, 126 Ill. App. 572.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

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This is the rule, not only with reference to contracts in general but
this rule also applies to policies of insurance. German Insurance
Company vs. Churchill, 25 Ill. App. 306; No. 5 v. Mutual Life Insurance
Company, 144 Ill. App. 434; affirmed 140 Ill. 46; Morris & Company vs.
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to take advantage of a waiver must allege it in his pleadings. For that reason if the provisions of the rubber stamp clause were waived, the duty was upon the plaintiff in error to allege such waiver in her declaration and it was not the duty of defendant in error to allege it in the pleas.

It is also insisted that the pleas do not allege that the act of the insured in entering railroad train service in any way contributed to his death. It is sufficient answer to this contention to say that under the terms of the policy it was not necessary that there should be any such allegation in the plea. The rubber stamp section provided that the policy should be null and void if the insured engaged in railroad train service without the consent of the defendant in error and, therefore, it was not necessary to allege that his death was caused by such service. *Mutual Protective League vs. Langsdorf*, 126 Ill. App. 572.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

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It is also insisted that the plea do not allege that the act of the insured in entering railroad train service in any way contributed to his death. It is sufficient answer to this contention to say that under the terms of the policy it was not necessary that there should be any such allegation in the plea. The rubber stamp section provided that the policy should be null and void if the insured engaged in railroad train service without the consent of the defendant in error and, therefore, it was not necessary to allege that his death was caused by such service. Mutual Protective Society vs. Langsdorf, 126 Ill. 109, 578.

The finding no reversible error and the judgment will be affirmed. Judgment affirmed.

STATE OF ILLINOIS, } ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.



abstract
only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 678

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
OCT 17 1925 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

1875

Patek Brothers, a corporation,
appellant,

vs.

Appeal from the County Court

Gossard Radio and Wire Company,
formerly Ferro Manufacturing
Company,

of Boone County.

appellee.

240 I.A. 678

Partlow, J.

Appellant, Patek Brothers, a corporation, began suit before a justice of the peace in Boone county, against appellee, Gossard Radio and Wire Company, formerly, Ferro Manufacturing Company, upon two trade acceptances, one for \$100.00 and the other for \$200.00, given by Ferro Manufacturing Company, which company was later reorganized as Gossard Radio and Wire Company. From the judgment rendered by the justice of the peace an appeal was prosecuted to the county court of Boone county. There was a trial by jury, judgment in favor of appellant on the \$100.00 trade acceptance only, and an appeal has been prosecuted to this court.

Appellant was in business in Milwaukee, Wisconsin. The place of business of appellee was in Belvidere, Illinois. John Pattera was doing business as the Clinton Cabinet Works, in Clinton, Wisconsin. Appellee entered into a contract with Pattera in which Pattera was to make for appellee certain radio cabinets. On August 1, 1923, appellee, under this contract, in the name of Ferro Manufacturing Company, gave to Pattera the two trade acceptances in this case, together with other similar instruments. In July, 1923, Pattera wanted to buy of appellant some vitrolite, which is heavy white glass used for table tops in restaurants. The amount of the purchase was \$545.00. When Pattera went to see appellant about this purchase he was asked concerning his financial standing. He said he had done business with appellant years before, but there was no record thereof on the books of appellant. Appellant decided that Pattera was not financially responsible for the order and so informed him, and suggested that appellant would fill the

Peter Peters, a corporation,

appellant,

vs.

Gossard Radio and Wire Company,
formerly Radio Manufacturing
Company,

of Boone County.

Appeal from the County Court

affirmed.

Parlow, J.

340 I.A. 678

Appellant, Peter Peters, a corporation, came suit before a justice of the peace in Boone county, against appellee, Gossard Radio and Wire Company, formerly, Radio Manufacturing Company, upon two trade acceptances, one for \$100.00 and the other for \$200.00, given by Radio Manufacturing Company, which company was later reorganized as Gossard Radio and Wire Company. From the judgment rendered by the justice of the peace an appeal was presented to the county court of Boone county. There was a trial of fact, judgment in favor of appellee on the \$100.00 trade acceptance only, and no appeal has been presented to this court.

Appellant was in business in Milwaukee, Wisconsin. The place of business of appellee was in Belvidere, Illinois. John Peters was doing business as the Clinton County Store, in Clinton, Wisconsin. Appellee entered into a contract with Peters in which Peters was to make for appellee certain radio receivers. On about 1, 1932, appellee, under this contract, in the name of Radio Manufacturing Company, gave to Peters the two trade acceptances in this case, together with other similar instruments. In July, 1932, Peters wanted to pay of appellee some merchandise, which is heavy white glass used for radio tops in restaurants. The amount of the purchase was \$41.00. But Peters went to see appellee about this purchase he was asked concerning his financial condition. He said he had some business with excellent years before, but there was no record thereof on the books of settlement. Appellant desired that Peters was not financially responsible for the order and so informed him, and suggested that appellee would fill the

order C. O. D. or that Pattera could pay sixty-five per cent of the contract, or give security therefor. Several days later, during the first week in August, Pattera returned to the office of appellant and asked whether some trade acceptances would be taken as security for the contract. He said he had money coming from appellee, and that it was unable to pay at that time and had asked him to take the trade acceptances. Appellant agreed to take the trade acceptances, and Pattera turned them over to appellant to apply on the order he had placed with appellant. The acceptances were kept by appellant until about a month before they were due on November 1, 1923, when they were deposited for collection, but they were returned protested. Immediately upon being notified of the protest, appellant communicated by telephone with Turner, the president of appellee, who signed the trade acceptances. Appellant testified that Turner said the matter would be taken care of in a few days. Turner testified that it was likely he did have a conversation with appellant, but if he did he certainly would never have promised to pay appellant because appellee never got anything for the acceptances. Turner also testified that he did not know anything about these acceptances at the time he talked to appellant over the telephone, and supposed they were talking about something some other person had been buying. He also testified he did not know, at that time, who had these acceptances, he knew they had been originally issued to Pattera, but there was nothing said over the telephone that they were given by Ferro Manufacturing Company and signed by Turner as president. Immediately after this telephone conversation, appellant wrote to Turner and called his attention to the alleged promise over the telephone to pay. On November 26, 1923, appellee wrote appellant a letter in which appellee stated that appellee had made a contract with Pattera for some radio cabinets, and had given him trade acceptances amounting to \$500.00, to buy the material necessary to make the cabinets; that the order was partially delivered, and the remainder of it was undelivered, and for that reason appellee refused to pay the trade acceptances; that appellee was the debtor of Pattera for a very small amount. The acceptances were not

order C. O. D. on that latter could pay fifty-five per cent of the contract, or five security therefor. Several days later, during the first week in August, Tatters returned to the office of appellant and called whether some trade acceptance would be issued as security for the contract. He said he had money coming from appellant, and that it was unable to pay at that time and had asked him to take the trade acceptances. Appellant agreed to take the trade acceptances, and Tatters turned them over to appellant to apply on the order he had placed with appellant. The acceptances were kept by appellant until about a month before they were due on November 1, 1932, when they were deposited for collection, but they were returned protested. Immediately upon being notified of the protest, appellant communicated by telephone with Turner, the president of appellee, who signed the trade acceptances. Appellant testified that Turner said the matter would be taken care of in a few days. Turner testified that it was likely he did have a conversation with appellant, but if he did he certainly would never have promised to pay appellant because appellee never had any thing for the acceptances. Turner also testified that he did not know anything about these acceptances at the time he talked to appellant over the telephone, and suggested they were talking about something some other person had been buying. He also testified he did not know, at that time, who had these acceptances. He knew they had been originally issued to Patterson, but there was nothing said over the telephone that they were given by Texaco Manufacturing Company and signed by Turner as president. Immediately after this telephone conversation, appellant wrote to Turner and called his attention to the alleged promise over the telephone to pay. On November 22, 1932, appellee wrote appellant a letter in which appellee stated that appellee had made a contract with Tatters for some radio cabinets, and had given him trade acceptances amounting to \$500.00, to pay the material necessary to make the cabinets; that the order was partially delivered, and the remainder of it was undelivered, and for that reason appellee refused to pay the trade acceptances; that appellee was the debtor of Tatters for a very small amount. The acceptances were not

paid and this suit was commenced.

The contention of appellant is that the trade acceptances were negotiable instruments, were transferred for a valuable consideration, in due course of business, without notice of defects, and before maturity; that their introduction in evidence made a prima facie case, and therefore appellant was entitled to judgment for \$300.00 on the two acceptances.

Section 1 of the Negotiable Instrument Act provides that any instrument payable in money, to be negotiable, must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. Must contain an unconditional promise, or order, to pay a sum certain in money. 3. Must be payable on demand, or at a fixed or determinable future time. 4. Must be payable to the order of a specified person or to bearer. 5. Where the instrument is addressed to a drawee, he must be named, or otherwise indicated therein with reasonable certainty.

Section 25 defines value as any consideration sufficient to support a simple contract. An antecedent, or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction thereof or as surety therefor, and is deemed such whether the instrument is payable on demand or at a future time. Section 26 provides that where value has at the time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. Section 28 provides that absence or failure of consideration is a matter of defense as against any person not a holder in due course. Section 31 provides that the indorsement must be in writing on the instrument itself, or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. Section 45 provides that except where an instrument bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Section 52 provides that a holder in due course is a holder who

said and this suit was commenced.

The contention of appellant is that the three acceptances were negotiable instruments, were transferred for a valuable consideration, in the course of business, without notice of defects, and before maturity; that their introduction in evidence made a prima facie case, and therefore appellant was entitled to judgment for \$30.00 on the two acceptances.

Section 1 of the Negotiable Instrument Act provides that any instrument payable in money, to be negotiable, must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. It must contain an unconditional promise, or order, to pay a sum certain in money. 3. It must be payable on demand, or at a fixed or determinable future time. 4. It must be payable to the order of a specified person or to bearer. 5. Where the instrument is addressed to a drawee, he must be named, or otherwise indicated therein with reasonable certainty.

Section 22 defines value as any consideration sufficient to support a simple contract. An antecedent, or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction thereof or as a security therefor, and is deemed such whether the instrument is payable on demand or at a future time. Section 23 provides that where value has at the time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. Section 24 provides that absence or failure of consideration is a matter of defense as against any person not a holder in due course. Section 25 provides that the indorsement must be in writing on the instrument itself, or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. Section 26 provides that except where an instrument bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. Section 27 provides that a holder in due course is a holder who

has taken the instrument under the following conditions: 1. That the instrument is complete and regular upon its face. 2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact. 3. That he took it in good faith and for value. 4. That at the time it was negotiated to him he had no notice of any informality in the instrument, or defect in the title of the person negotiating it.

These various sections of the statute are the law relative to the facts in this case and they are amply sustained by many decisions. Each of the instruments in question conformed in every respect to the above statutory provisions. Each was dated at Clinton, Wisconsin, August 1, 1923; that city was specifically named as the address of the drawer; the Ferro Manufacturing Company was specifically stated in each to be the name of the drawee, and Belvidere, Illinois, was specifically given as the address of the drawee. There was a specific agreement, in the \$100.00 acceptance, to pay that amount to the order of the Clinton Cabinet Works, on November 1, 1923. The \$200.00 acceptance agrees to pay \$200.00 to the order of "ourselves" on November 1, 1923. Each recited that the obligation of the acceptor arise out of the purchase of goods from the drawer. The interest was six per cent. Each was signed by Clinton Cabinet Works, by John Pattera, President, as the drawer. The acceptances were dated at Belvidere, Illinois, August 1, 1923, and were signed by Ferro Manufacturing Company, by C. H. Turner, who was specifically named as the acceptor. Each was indorsed on the back by the Clinton Cabinet Works, by John Pattera, President.

Appellee insists that on account of the acceptance for \$200.00 being payable to "ourselves", that it was, in fact, payable to appellee, and not to the Clinton Cabinet Works, and as it was not indorsed by appellee that appellant had no title to it, and was not entitled to recover upon it. There is no merit in this contention. As above stated each instrument specifically states the name of the drawer and the drawee, and gives the address of each. The Clinton Cabinet Works

has been the instrument under the following conditions: 1. That the instrument is complete and valid in all respects. 2. That the holder of it before it was over, and without notice that it has been previously assigned, it was the fact. 3. That no fact is in good faith and for value. 4. That at the time it was negotiated to him he had no notice of any informality in the instrument, or defect in the title of the person negotiating it.

These various sections of the statute are the law relative to the facts in this case and they are fully sustained by many decisions. Each of the instruments in question contained in every respect to the above statutory provisions. Each was dated at Clinton, Wisconsin, August 1, 1922; that city was specifically named as the address of the drawer; the First Manufacturing Company was specifically stated in each to be the name of the drawee, and Belvidere, Illinois, was specifically given as the address of the drawee. There was a specific agreement, in the \$100.00 acceptance, to pay that amount to the order of the Clinton Cabinet Works, on November 1, 1922. The \$100.00 acceptance was given to the order of "ourselves" on November 1, 1922. Each recited that the obligation of the acceptor was cut off the purchase of goods from the drawer. The interest was six per cent. Each was signed by Clinton Cabinet Works, by John Jettner, President, as the drawer. The acceptances were dated at Belvidere, Illinois, August 1, 1922, and were signed by First Manufacturing Company, by C. E. Turner, who was specifically named as the acceptor. Each was indorsed on the back by the Clinton Cabinet Works, by John Jettner, President.

The appellee insists that on account of the acceptance for \$100.00 being payable to "ourselves", that it was, in fact, payable to appellee and not to the Clinton Cabinet Works, and that it was not indorsed by appellee. Appellee had no title to it, and was not entitled to recover upon it. There is no merit in this contention. As above stated each instrument specifically stated the name of the drawer and the drawee, and gives the address of each. The Clinton Cabinet Works

was the drawer and the word "ourselves" refers to the drawer, Clinton Cabinet Works. It was not only payable to the Clinton Cabinet Works but was so indorsed, and the title vested in appellant.

The acceptances were negotiable instruments, transferable by indorsement, and the undisputed evidence is that they were transferred to appellant before maturity, therefore, appellant was a holder for value, before maturity, and was entitled to payment unless there was evidence of notice to appellant before the transfer, of a failure of consideration in whole or in part. In support of the contention that appellant was a holder with notice, appellee contends that at the time of the transfer to appellant, that Pattera told appellant that he could not collect the acceptances from appellee. The evidence does not sustain this contention, but on the contrary is that Pattera told appellant at the time of the transfer, that he had money coming from appellee which it could not pay him at that time, and that he had been asked to take trade acceptances in part payment. This evidence falls far short of being sufficient to charge appellant with notice that there was a defense against the instruments on the ground that there was a failure of consideration. With the evidence in this condition the court permitted appellee to prove the facts which constituted the failure of consideration. Appellant objected to the evidence, and moved to exclude it. The court did not rule upon the objection at the time it was made, but stated that appellee would have to prove notice, or the evidence would be excluded. No evidence of notice was offered by appellee, the court failed to exclude the evidence, and it was considered by the jury. This was error. All of the evidence relative to a failure of consideration should have been excluded, for the reason that appellant had no notice of such defect until after November 26, 1923, which was after the instruments were due, and long after they became the property of appellant. If this evidence had been excluded there would have been no defense to the instruments and appellant would have been entitled to judgment for \$300.00. Clark vs. Newton, 235 Ill. 530.

was the answer and the court themselves refer to the answer, which
against the answer. It was not only payable to the plaintiff but also
but was so intended, and the title vested in the plaintiff.
The answer was not a negotiable instrument, it was a bill of exchange
does not, and the material evidence is that the plaintiff was a holder for
to appeal before maturity, therefore, the plaintiff was a holder for
value, before maturity, and was entitled to payment of the bill of exchange
evidence of notice to the plaintiff before the maturity of a bill of exchange
consideration in value or in part. In answer of the plaintiff's plea
evidence was a holder with notice, evidence contains that at the time
of the transfer to the plaintiff, that the plaintiff was a holder for value
not collect the acceptance from the plaintiff. The evidence does not
tain this contention, but on the contrary is that the plaintiff was a holder
at the time of the transfer, that he had been causing from the plaintiff
which it could not pay him at that time, and that he had been caused
to take trade acceptance in part payment. This evidence fails to
show of being sufficient to charge the plaintiff with notice that there
was a defense against the instrument on the ground that there was a
failure of consideration. With the evidence in this condition the
court permitted the plaintiff to prove the facts which constituted the
failure of consideration. The plaintiff objected to the evidence, and
sought to exclude it. The court did not rule upon the objection at the
time it was made, but stated that the plaintiff would have to prove notice,
or the evidence would be excluded. No evidence of notice was offered
by the plaintiff, the court failed to exclude the evidence, and it was
considered by the jury. This was error. All of the evidence relative
to a failure of consideration should have been excluded, for the reason
that the plaintiff had no notice of such defect until after payment of
1923, which was after the instrument was due, and long after the
became the property of the plaintiff. If this evidence had been excluded
there would have been no defense to the instrument and the plaintiff
would have been entitled to judgment for \$200.00. (See W. H. Henson,

Appellee contends that appellant cannot maintain this suit for the reason that it began a suit in Wisconsin against Pattera, and recovered a judgment for the total amount due appellant from Pattera, that by that act appellant elected its remedy, and waived its cause of action against appellee. There are several answers to this contention, but one of them will be sufficient. There is no competent evidence of a suit in Wisconsin, or a judgment against Pattera for the amount due. Appellant offered in evidence the deposition of Arthur L. Kohlmetz, the credit manager and assistant secretary of appellant. He testified to the facts relative to the contract with Pattera, and the transfer of the instruments in question from Pattera to appellant. He did not testify with reference to any suit or judgment in Wisconsin against Pattera. On cross-examination, over the objection of appellant, he testified with reference to the Wisconsin suit. The objection to this evidence was renewed when the depositions were read on the trial but the objection was overruled by the court. This evidence was not proper cross-examination. The objection ~~to~~ it should have been sustained and the evidence excluded. No evidence was offered by appellee on this question, therefore, there was no competent evidence to sustain the contention by appellee with reference to the Wisconsin suit and it cannot be considered in this case.

The judgment will be reversed and the cause remanded.

Reversed and Remanded.

applying contents that applicant cannot maintain this suit
and the reason that is given is that in Wisconsin applicant is
and recovered a judgment for the full amount of the judgment
factors, that by that act applicant elected the remedy, and waived
its cause of action against respondent. There are several reasons for
this contention, one of them will be mentioned. There is no
consistent evidence as to a shift in Wisconsin, or a judgment against
respondent for the amount due. Applicant offered in evidence the
deposition of respondent, Holmsted, the credit manager and assistant
secretary of respondent. He testified to the facts relative to the
contract with respondent, and the transfer of the merchandise in question
from Holmsted to respondent. He did not testify with reference to
any sale or payment in Wisconsin against respondent. On cross-examina-
tion, over the objection of applicant, he testified with reference
to the Wisconsin suit. The objection to this evidence was removed
and the testimony was read on the trial and the objection was
overruled by the court. This evidence was not proper evidence
there. The objection to it should have been sustained and the evidence
excluded. No evidence was offered to explain the Wisconsin
therefore, there was no consistent evidence in evidence in the contention
of applicant with reference to the Wisconsin suit and it cannot be
considered in this case.

The judgment will be reversed and the cause remanded.

Reversed and Remanded.

STATE OF ILLINOIS, { ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

*abstract
only*

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 678

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On

SEP 24 1925 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

[Faint, illegible handwriting throughout the page, possibly bleed-through from the reverse side.]

Joseph Adelman,

appellee,

vs.

Appeal from the Circuit Court

of Kankakee County.

Illinois Central Railroad

Company,

appellant.

240 I.A. 678

Partlow, J.

Appellee, Joseph Adelman, obtained a judgment for \$226.30, in the circuit court of Kankakee county, against appellant, Illinois Central Railroad Company, for injuries to his automobile, and an appeal has been prosecuted to this court.

The only grounds for a reversal are that appellant was not guilty of the negligence charged, and that appellee was not in the exercise of ordinary care for his own safety but was guilty of contributory negligence.

The first count of the declaration charged general negligence. The second count was dismissed. The third count set up an ordinance of the city of Kankakee which provided that "every locomotive engine, car, or train of cars, running in the nighttime on any railroad tracks in the city, shall have and keep a bright and conspicuous light at the forward end of such locomotive engine, car, or train of cars. If such engine, or train, be backing, it shall have a conspicuous light at the rear of the engine, or train, so as to show the direction in which the same is moving," and alleged a violation of this ordinance. The fourth count charged the failure to have a flagman at the crossing.

The evidence shows that Hickory street, in the city of Kankakee, extends east and west, and is about two blocks south of the station of appellant. The railroad extends north and south across Hickory street and consists of ten tracks, on a right of way two hundred feet wide. The surface of the street across the right of way is about five feet higher than the rest of the street. The first north and south street east of the tracks is East Avenue, and the first

Joseph Abelman,

Appellee,

Appeal from the Circuit Court

vs.

of Kansas County.

Illinois Central Railroad

Company,

Appellant.

240 I.A. 678

Parton, J.

Appellee, Joseph Abelman, obtained a judgment for \$25.30, in

the circuit court of Kansas county, against appellant, Illinois

Central Railroad Company, for injuries to his automobile, and an

appeal has been prosecuted to this court.

The only grounds for reversal are that appellant was not

guilty of the negligence charged, and that appellee was not in the

exercise of ordinary care for his own safety but was guilty of com-

paratory negligence.

The first count of the declaration charged general negligence.

The second count was dismissed. The third count set up an ordinance

of the city of Kansas which provided that "every locomotive engine

car, or train of cars, running in the nighttime on any railroad

tracks in the city, shall have and keep a bright and conspicuous

light at the forward end of such locomotive engine, car, or train of

cars. If such engine, or train, be backing, it shall have a conspic-

uous light at the rear of the engine, or train, so as to show the

direction in which the same is moving," and alleged a violation of

this ordinance. The fourth count charged the failure to have a

flagman at the crossing.

The evidence shows that Hickory street, in the city of Kansas,

extends east and west, and is about two blocks south of the station

of appellant. The railroad extends north and south across Hickory

street and consists of ten tracks, on a right of way two hundred

feet wide. The surface of the street across the right of way is

about five feet higher than the rest of the street. The first north

and south street east of the tracks is East Avenue, and the first

north and south street west of the tracks is West Avenue. About ~~10:30~~ 10:30 P. M. on December 31, 1923, appellee, a young lady cousin of appellee; and Morris Jaffe, started east in appellee's automobile from a house on West Hickory street about two hundred feet west of the right of way. Jaffe sat in the front seat with appellee. A train, consisting of an engine headed north, with seven cars behind it, and three cars ahead of it, was being backed south across Hickory street, on what was known as the scale track, which was the fifth track from the west side of the right of way. The weather was clear and cold, and there were street lights on the street intersections.

Appellee testified that as he approached the crossing, he was traveling five or six miles per hour. He heard no bell or whistle. He looked, as he approached the crossing, and saw that the way was clear. He could see across the crossing on either side and could not see anything or anybody except a car which was standing on the track, which track he testified, was immediately west of the track upon which the collision occurred, and that the car was immediately north of the north line of Hickory street. There is some conflict in the evidence as to just where this car was standing. Appellant claims that it stood on the track farthest west, ninety-one feet from the track where the collision occurred, and about ten or twenty feet north of the north line of Hickory street, and that there were no other cars on the other tracks west of the scale track for a distance of at least one hundred and twenty feet north of the sidewalk on the north side of Hickory street. Appellee testified that he ascended the grade to the right of way, and when he got on the track where the car was standing, he suddenly saw the end of the train in front of him. He turned his automobile to the right and attempted to parallel the track, but the step on the first car caught the fender of the automobile and caused the damage. He testified there was no light on the head end of the car which struck the automobile, and that there was nobody on the track; that the train was traveling five or

North and South street west of the track is just across. About
10:30 P. M. on December 11, 1912, appeared, a young lady
consists of a bicycle, and a motor car, several feet in front of
automobile from a house on East Hickory street about two hundred
feet west of the right of way. Traffic was in the street west with
appealed. A train, consisting of an engine, loaded with coal, with seven
cars behind it, and three cars ahead of it, was moving south
across Hickory street, or what was known as the coal track, when
was the first track from the west side of the right of way. The
weather was clear and cold, and there were street lights on the
street intersections.

Appellee testified that as he approached the crossing, he was
traveling like a car, called out loud. He heard no bell or whistle.
He looked, as he approached the crossing, and saw that the way was
clear. He could see across the crossing on either side and could
not see anything or anybody except a car which was standing at the
track, which track he testified, was immediately west of the track
upon which the collision occurred, and that the car was immediately
north of the north line of Hickory street. There is no conflict
in the evidence as to that where the car was standing. Appellee
states that it stood on the track farthest west, ninety-one feet
from the track where the collision occurred, and about ten or twenty
feet north of the north line of Hickory street, and that there was
no other cars on the other tracks west of the coal track for a
distance of at least one hundred and twenty feet north of the side-
walk on the north side of Hickory street. Appellee testified that he
ascended the grade to the right of way, and when he got on the track
where the car was standing, he suddenly saw the end of the train in
front of him. He turned his automobile to the right and attempted
to parallel the track, but the step on the first car caught the corner
of the automobile and caused the damage. He testified there was no
light on the front end of the car which struck the automobile, and that
there was nobody on the train; that the train was a traveling time or

six miles per hour.

Jaffe testified that they looked closely both ways to see if anything was coming as they approached the crossing. The road was clear. He did not notice the train until they were five feet from the car which struck the automobile. There was no light on that car. Before they were struck he saw nobody on the car. He heard no alarm of any kind; that they had crossed one or two tracks before the collision; that he was not sure whether the automobile was running in high or not; that there was a freight car north of the crossing on the first track. It was fifteen or twenty feet north of Hickory street, near West Avenue, and that it was only a few feet from the track where the car stood to the track where they were struck by the train.

J. E. Senesac, a brakeman on the train, testified that as the train approached Hickory street, he was riding on the south end of the front car and had a lighted lantern in his hand; that he had his feet in the stirrup which was on the south end of the car on the east side. When the train was about one hundred twenty feet from Hickory street he saw the automobile. He held his lantern out and gave the engineer a sign to slow down. The train slowed down a little and he noticed that the automobile kept coming right on. He stuck his lantern on the south end of the car facing south but the automobile made no effort to stop. The automobile was in the middle of Hickory street, and was fourteen to twenty feet away, when he saw that a collision could not be avoided, and he gave a sign to the engineer, who applied the emergency, and the train was stopped in about twenty feet; that the automobile was going twelve to fifteen miles per hour, and the train was going about five miles per hour. He testified the automobile struck the south car of the train about three feet from the south end, and the front fender was caught beneath the bottom of the car.

The foreman of the train crew, testified that Senesac was riding on the south end on the east side of the car with a lighted lantern in his hand. He saw Senesac give the sign to slow up a little.

his allies per hour.

Wells testified that they looked closely both ways to see if anything was coming as they approached the crossing. The road was clear. He did not notice the train until they were five feet from the car which struck the automobile. There was no light on that car. Before they were struck he saw nobody on the car. He saw no lights of any kind; that they had crossed one or two tracks before the collision; that he was not sure whether the automobile was running in right or not; that there was a freight car north of the crossing on the first track. It was fifteen or twenty feet north of highway street, near East Avenue, and that it was only a few feet from the track where the car stood in the track where they were struck by the train.

J. E. Bennett, a foreman on the train, testified that as the train approached highway street, he was riding on the south end of the first car and had a lighted lantern in his hand; that he was five feet in the street which was on the south end of the car on the west side. When the train was about one hundred twenty feet from highway street he saw the automobile. He felt his lantern out and gave the engineer a sign to slow down. The train slowed down a little and he noticed that the automobile was coming right at it. He struck his lantern on the south end of the car fifteen feet and the automobile made no effort to stop. The automobile was in the middle of highway street, and was fifteen to twenty feet away, when he saw that a collision could not be avoided, and he gave a sign to the engineer, who applied the emergency, and the train was stopped in about twenty feet; that the automobile was going twelve to fifteen miles per hour, and the train was going about five miles per hour. He testified the automobile struck the south end of the first car about three feet from the south end, and the front tender was caught beneath the bottom of the car.

The foreman of the train crew, testified to Bennett was riding on the south end on the west side of the car with a lighted lantern in his hand. He saw Bennett give the sign to slow down a little.

Senesac gave a wide stop sign which Pennell relayed to the engineer and the train was stopped.

The case was apparently tried upon the first and the third counts of the declaration which charged general negligence and the violation of the ordinance with reference to a light on the end of the car. On these questions there was a sharp conflict in the evidence. The witnesses for appellant testified that there was a light and that a signal was given. The witnesses for appellee testified there was no light and no signals were given. Under this condition of the evidence it was purely a question for the jury to say whether the appellant was guilty of the negligence charged in the first or third counts. The verdict of the jury on those questions is binding upon this court unless we can say that it is manifestly against the weight of the evidence which we do not feel justified in doing.

The other question was whether appellee was in the exercise of due care for the safety of his automobile, or whether he was guilty of contributory negligence. The contention of appellant is that there was plenty of light on the crossing, and that all appellee had to do was to look and listen and he would have seen the train. There was a car located so that it partially, at least, obstructed the view of appellee up the track to the north. There was a dispute as to just where this car was located, but if the evidence on behalf of appellee is to be believed, it was in such a position that it obstructed the view of appellee until the train came out from behind the car, and then he did not have time to stop. It is also claimed by appellant that there was some evidence that appellee was under the influence of intoxicating liquor, and he was not exercising due care for his own safety. One witness testified that he smelled liquor upon appellee's breath just after the accident. Other witnesses called by appellee, testified that they had been with him for some time prior to the accident, and that he had not been drinking. Appellee testified he had not taken any intoxicating liquor during

James gave a wife who which forwardly relayed to the witness

and the train was stopped.

The case was originally filed upon the first and last of the counts of the indictment which charged criminal negligence and the violation of the ordinance with reference to a light on the end of

the car. On these questions there was a direct conflict in the

evidence. The witnesses for appellant testified that there was a light and that a signal was given. The witnesses for appellee testified that there was no light and no signal were given. Under this conflict

of the evidence it was the duty of the jury to say whether the appellant was guilty of the negligence charged in the first or third counts. The verdict of the jury on those counts is binding upon this court unless we can say that it is manifestly against the weight of the evidence which we do not feel justified

in doing.

The other question was whether appellee was in the exercise of

due care for the safety of his automobile, or whether he was guilty

of contributory negligence. The contention of appellee is that

there was a light on the ground, and that all appellee

had to do was to look and listen and he would have seen the train.

There was a bar located so that it partially, at least, obstructed

the view of appellee in the track to the north. There was a signal

as to just where this bar was located, and if the evidence on behalf

of appellee is to be believed, it was in such a position that it

obstructed the view of appellee until the train came out from behind

the bar, and then he did not have time to stop. It is also alleged

by appellee that there was some evidence that appellee was under

the influence of intoxicating liquor, and he was not exercising due

care for his own safety. One witness testified that on seeing

the train appellee's horse just after the accident. Other wit-

nesses called by appellee testified that they had seen with him

for some time prior to the accident, and that he had not been drinking.

Appellee testified he had not taken any intoxicating liquor during

that day. What we have said with reference to the proof of the negligence charged in the declaration is also applicable to the question as to whether appellee was in the exercise of due care for his own safety. It was a question for the jury. There was evidence of due care, and we do not feel justified in saying that the finding of the jury on that point was manifestly against the weight of the evidence.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

that day. What we have said with reference to the fact of the negligence charged in the declaration is also applicable to the question as to whether negligence was in the exercise of due care for his own safety. It was a question for the jury. There was evidence of due care, and we do not feel justified in saying that the finding of the jury on that point was manifestly against the weight of the evidence.

be find no reversible error and the judgment will be affirmed.

judgment affirmed.

STATE OF ILLINOIS, ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

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abstract
only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 678

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
DEC 25 1900 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

24th 1912

Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 21st inst. in relation to the above matter.

I am sorry to hear that you are unable to visit the office at the present time. I will endeavor to have the necessary papers forwarded to you as soon as possible.

I am, Sir, very respectfully,
Yours truly,
J. H. [Name]

I. H. Burnstine and Isadore
Burnstine, doing business as
Riviera Motor Sales,

appellants,

Appeal from the Circuit Court

vs.

of Grundy County.

James Mack, Sheriff,

appellee.

240 I.A. 678

Partlow, J.

Appellants, I. H. Burnstine and Isadore Burnstine, doing business as Riviera Motor Sales, began an action of replevin in the circuit court of Grundy county against appellee, James Mack, sheriff of Grundy county, to recover possession of a Chrysler automobile. Two pleas were filed. The first alleged that the property was taken by the sheriff under a writ of execution in favor ^{of} Firestone Tire & Rubber Company and against W. B. Erickson, and at the time of the levy the property belonged to W. B. Erickson and not to the plaintiffs. The second alleged that the property, at the time of the levy, was the property of a third party, to-wit, W. B. Erickson, and not the property of the plaintiffs. A jury was waived and the cause was submitted to the court for trial. The court found the right of possession was in appellee, and entered an order retorno habendo. From this judgment an appeal was prosecuted.

On September 11, 1922, the Firestone Tire & Rubber Company obtained a judgment in the circuit court of Grundy county against W. B. Erickson for \$818.51, and costs. On August 14, 1924, an execution was issued and delivered to the sheriff of Grundy county and served on Erickson on August 15, 1924. W. B. Erickson was thirty-nine years old and had lived at Morris, in Grundy county, all of his life. His father and brother owned a dry goods store which was operated under the name of Erickson Dry Goods Company. The father or brother, or both, owned a Jewett automobile. On August 19, 1924, W. B. Erickson drove the Jewett automobile to the place of business of appellants in Chicago and opened negotiations for the exchange of the Jewett car

I. H. Barnhart and Isadore
Barnhart, doing business as
Rivers Motor Sales,

Appellants,
vs.
James Mack, Sheriff,
of Grady County.

240 I.A. 678

Appellee.

Partlow, J.

Appellants, I. H. Barnhart and Isadore Barnhart, doing business as Rivers Motor Sales, began an action of replevin in the circuit court of Grady county against appellee, James Mack, Sheriff of Grady county, to recover possession of a Chrysler automobile. Two pleas were filed. The first alleged that the property was taken by the sheriff under a writ of execution in favor of Firestone Tire & Rubber Company and against W. B. Erickson, and at the time of the levy the property belonged to W. B. Erickson and not to the plain filia. The second alleged that the property, at the time of the levy, was the property of a third party, to-wit, W. B. Erickson, and not the property of the plaintiff. A jury was called and the case was submitted to the court for trial. The court found the right of replevin was in appellee, and entered an order returno habentis. From this judgment an appeal was prosecuted.

On September 11, 1932, the Firestone Tire & Rubber Company obtained a judgment in the circuit court of Grady county against W. B. Erickson for \$188.51, and costs. On August 14, 1934, an execution was issued and delivered to the sheriff of Grady county and served on Erickson on August 15, 1934. W. B. Erickson was thirty-nine years old and had lived at Morris, in Grady county, all of his life. His father and brother owned a dry goods store which was operated under the name of Erickson Dry Goods Company. The father or brother, or both, owned a Jewett automobile. On August 12, 1934, W. B. Erickson drove the Jewett automobile to the place of business of appellee in Chicago and opened negotiations for the purchase of the Jewett car

for the Chrysler car in question. The evidence on behalf of appellants shows that W. B. Erickson told appellants that he was the owner of the Erickson Dry Goods Company; that he was rated in Dunn & Bradstreet at \$50,000, as a company, and his net worth was \$60,000; that he had never been sued; that his monthly income was \$300.00 and his yearly income \$4000.00; that he had household goods of the value of \$5000.00. A written statement of these financial facts was made by W. B. Erickson. The trade was made and a note for \$912.65 was executed by W.B. Erickson to appellants, payable \$150.00 each month for five months, and \$162.50 on the sixth month after date. The Chrysler car was delivered to W. B. Erickson and the Jewett car was delivered to appellants. On August 25, 1924, the execution in favor of Firestone Tire & Rubber Company was levied on the Chrysler car by appellee, as the property of W. B. Erickson and it was advertised for sale. Upon being notified of the levy, appellants had a conversation over the telephone with W. B. Erickson, or his attorney. Later W. B. Erickson went to Chicago and had a conference with appellants. The appellants sent their attorney to Morris and had several conferences with W. B. Erickson and his father and brother. It is contended by appellants that in these various conversations it was agreed to rescind the contract. Appellant was to tender back to W. B. Erickson and his father and brother, the mortgage, the Jewett car, and all payments that had been made thereon and adjust all financial differences between them; that appellants told W. B. Erickson to return the Chrysler car, and he replied that he could not do so as it was in the hands of the sheriff and he had no funds to pay the execution and no other property on which execution could be levied. It also appears that appellants insisted that they should be given a bill of sale for the Jewett car, and they agreed to sell it and adjust the financial differences, and as a result of that agreement a bill of sale was executed by A. E. Erickson, the brother of W. B. Erickson. The exact date of this bill of sale does not appear from the abstract but it was evidently late in October. On September 3, 1924, \$150.00 of the principal and \$5.51 interest, was paid and endorsed on the note

[illegible]

of W. B. Erickson. On September 22, 1924, another \$150.00 was paid, together with \$4.44 interest, which was endorsed upon the note. After demand was made upon appellee for the possession of the Chrysler car the writ of replevin in this case was sued out, the car was delivered to appellants, and they took it to Chicago and sold it.

It is contended by appellants that the judgment should be reversed for the reason that after they learned of the fraud, they immediately rescinded the sale, tendered back the property which they had received as the result of the trade, and were therefore entitled to the return of the Chrysler car. It is contended by appellee that the facts in evidence do not sustain this contention.

There are two reasons why this judgment must be affirmed. Rule 16 of this court provides the manner in which abstracts of record shall be prepared. It provides that every error urged shall appear from the abstract so that this court can from the abstract determine all questions in controversy without being compelled to examine the record or bill of exceptions. This rule has not been complied with in this case. The abstract merely refers by title to the affidavit for replevin, the bond, writ of replevin, declaration, pleas, and finding and judgment of the court. None of these pleadings are abstracted and it is impossible from the abstract to determine the questions at issue in this case. Appellee has filed an additional abstract which sets out the declaration, the pleas, and certain parts of the evidence which were omitted from the abstract of the bill of exceptions. The abstract also fails to show that any exception was taken to the finding and judgment of the court, or that any appeal was prayed or allowed, or that any appeal bond was fixed or approved, or that any bill of exceptions was ordered within a definite time. If there was no exception to the judgment, and no appeal was prayed or allowed, it certainly cannot be contended that the questions raised by appellants upon this appeal are properly before this court. On account of the imperfect condition of the abstract we are justified in affirming this judgment without considering the questions raised.

of W. L. Erickson. On September 12, 1925, amount \$10.00 was paid, together with \$4.44 interest, which was enclosed upon the order. After appeal was made upon application for the possession of the property and the writ of replevin in this case was denied, the case was referred to arbitration, and that took it to Chicago and back to it.

It is contended by appellants that the judgment should be reversed for the reason that after they learned of the trial, they immediately resigned the sale, and were therefore entitled to the return as the result of the trial, and were therefore entitled to the return of the Chrysler car. It is contended by appellees that the facts in evidence do not sustain this contention.

There are two reasons why this judgment must be affirmed. First, of this court provides the manner in which records of record shall be prepared. It provides that every error noted shall appear from the abstract so that this court can from the abstract determine all questions in controversy without being compelled to examine the record on file of exception. This rule has not been complied with in this case. The abstract only refers by title to the affidavit for replevin, the writ of replevin, declaration, plea, and finding and judgment of the court. None of these pleadings are abstracted and it is impossible from the abstract to determine the questions at issue in this case. Appellee has filed an additional abstract which sets out the declaration, the plea, and certain parts of the evidence which were offered from the abstract of the bill of exceptions. The abstract also fails to show that any exception was taken to the finding and judgment of the court, or that any appeal was prayed or allowed, or that any appeal bond was fixed or approved, or that any bill of exceptions was ordered within a definite time. If there was no exception to the judgment, and no appeal was prayed or allowed, it certainly cannot be reversed and the questions raised by appellants upon this appeal are properly before this court. On account of the imperfect condition of the abstract as are justified in affirming this judgment without considering the questions raised.

Even if the abstract did show that the case was properly before this court, and showed all of the pleadings and all of the errors urged, we do not think appellants made out such a case as entitled them to the possession of the Chrysler car. It is apparent from the evidence that W. B. Erickson was guilty of gross fraud and misrepresentation with reference to his financial condition and the ownership of the Jewett car at the time this exchange was made. His misrepresentations were sufficient to justify appellants in rescinding the sale on the ground of fraud. Under the evidence presented appellants, on discovering the fraud, had a right to rescind the contract, tender back all of the property received by them, demand possession of the property delivered by them, provided they did so promptly and the rescission was complete in all respects. *Buchanan v. Horney*, 12 Ill. 336; *Naugle v. Yerkes*, 187 Ill. 358; *Doane v. Lockwood*, 115 Ill. 490.

While the evidence on behalf of appellants tends to show that they did rescind the contract promptly, tendered back all of the property received by them, and demanded the Chrysler car, we do not think it is sufficient to show that the rescission was promptly, fully, or completely made. The levy was made on the Chrysler car on August 25, 1924. Within a day or two after the levy, appellants learned of the levy and on September 3, sued out the writ of replevin. They certainly did not repudiate the contract and tender back the Jewett car and all property received by them prior to that time for the reason that the note given to them by W. B. Erickson shows that the same day the writ of replevin was sued out that \$150.00 of principal, and \$5.51 of interest was paid upon this note, and again on September 22, 1924, \$150.00 of principal, and \$4.44 of interest was paid upon the note. The evidence does not show that these amounts were ever paid by appellants to Erickson or even tendered. The payment of this principal and interest was entirely contrary to the theory that the contract had been rescinded and the property turned back or tendered back. Not only does the evidence show that there were payments upon the note but it shows that long after the suit was brought

Given in the contract and show that the same was properly made.

this court, and showed all of the witnesses and all of the parties

urged, we do not think evidence made out such a case as entitled

them to the possession of the Chrysler car. It is apparent from

the evidence that W. B. Erickson was guilty of gross fraud and mis-

representation with reference to his financial condition and the

ownership of the latest car at the time this contract was made. His

misrepresentations were sufficient to justify rescission in rescind-

ing the sale on the ground of fraud. Under the evidence presented

appellate, on discovering the fraud, had a right to rescind the

contract, tender back all of the property received by them, demand

restitution of the property delivered by them, provided they did so

promptly, and the rescission was complete in all respects. *Johnson*

v. Lorne, 12 Ill. 326; *Smith v. York*, 187 Ill. 358; *James v.*

Lockwood, 115 Ill. 457.

While the evidence on behalf of appellants tends to show that

they did rescind the contract promptly, tender back all of the

property received by them, and demanded the Chrysler car, we do not

think it is sufficient to show that the rescission was prompt,

fully, or completely made. The levy was made on the Chrysler car on

August 27, 1924. Within a day or two after the levy, appellants

learned of the levy and on September 3, asked out the writ of replevin.

They certainly did not repudiate the contract and tender back the

latest car and all property received by them prior to that time for

the reason that the note given to them by W. B. Erickson shows that

the same day the writ of replevin was issued out that \$100.00 of

principal, and \$2.31 of interest was paid upon this note, and again

on September 22, 1924, \$100.00 of principal, and \$2.42 of interest

was paid upon the note. The evidence does not show that these payments

were ever paid by appellants to Erickson or even tendered. The payment

of this principal and interest and entirely contrary to the theory

that the contract had been rescinded and the property turned back or

tendered back. Not only does the evidence show that there was pay-

ments upon the note but it shows that long after the writ was brought

a bill of sale was executed by the brother of W. B. Erickson to appellants for the Jewett car, which was retained by appellants and never was delivered in rescission of the contract. It is true that appellants and Erickson could mutually agree to rescind and make whatever agreement they saw fit with reference to the return of the property but they could only rescind by tendering back the property fully and completely within apt time. The intention to rescind may be shown not only by what was said by the parties, but also by their acts. Sometimes the acts speak louder than the words. They said they rescinded, but their acts strongly tended to show that they did not in fact rescind to the extent which the law requires. This case presents several features which tend to show that appellants not only sought to retain the property received by them but they also sought to secure the possession of the Chrysler car. They were not entitled to do both. The trial court was in a better position to determine this question than this court is and we are impressed that this was the view which the trial court took of the matter. The judgment was not contrary to the weight of the evidence and should not be reversed unless it is contrary to the weight of the evidence.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

a bill of sale was executed by the brother of W. B. Erickson to a defendant for the lowest car, which was retained by appellants and never was delivered in possession of the defendant. It is true that appellants and Erickson could mutually agree to rescind and make whatever agreement they saw fit with reference to the return of the property and things could only rescind by tendering back the property fully and completely within any time. The intention to rescind may be shown not only by acts as said by the parties, but also by their words. Sometimes the acts reveal longer than the words. They said they rescinded, but their acts strongly tended to show that they did not in fact rescind to the extent which the law requires. This case presents several features which tend to show that appellants not only sought to retain the property received by them but they also sought to secure the possession of the Chrysler car. They were not entitled to do both. The trial court was in a better position to determine this question than this court is and we are impressed that this was the view which the trial court took of the matter. The judgment was not contrary to the weight of the evidence and should not be reversed unless it is contrary to the weight of the evidence.

We find no reversal is error and the judgment will be affirmed.

Judgment affirmed.

STATE OF ILLINOIS, { ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

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ATTEST: *[Signature]*
NOTARY PUBLIC
STATE OF *[illegible]*
COUNTY OF *[illegible]*
DATE: *[illegible]*

abstract
only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 678

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

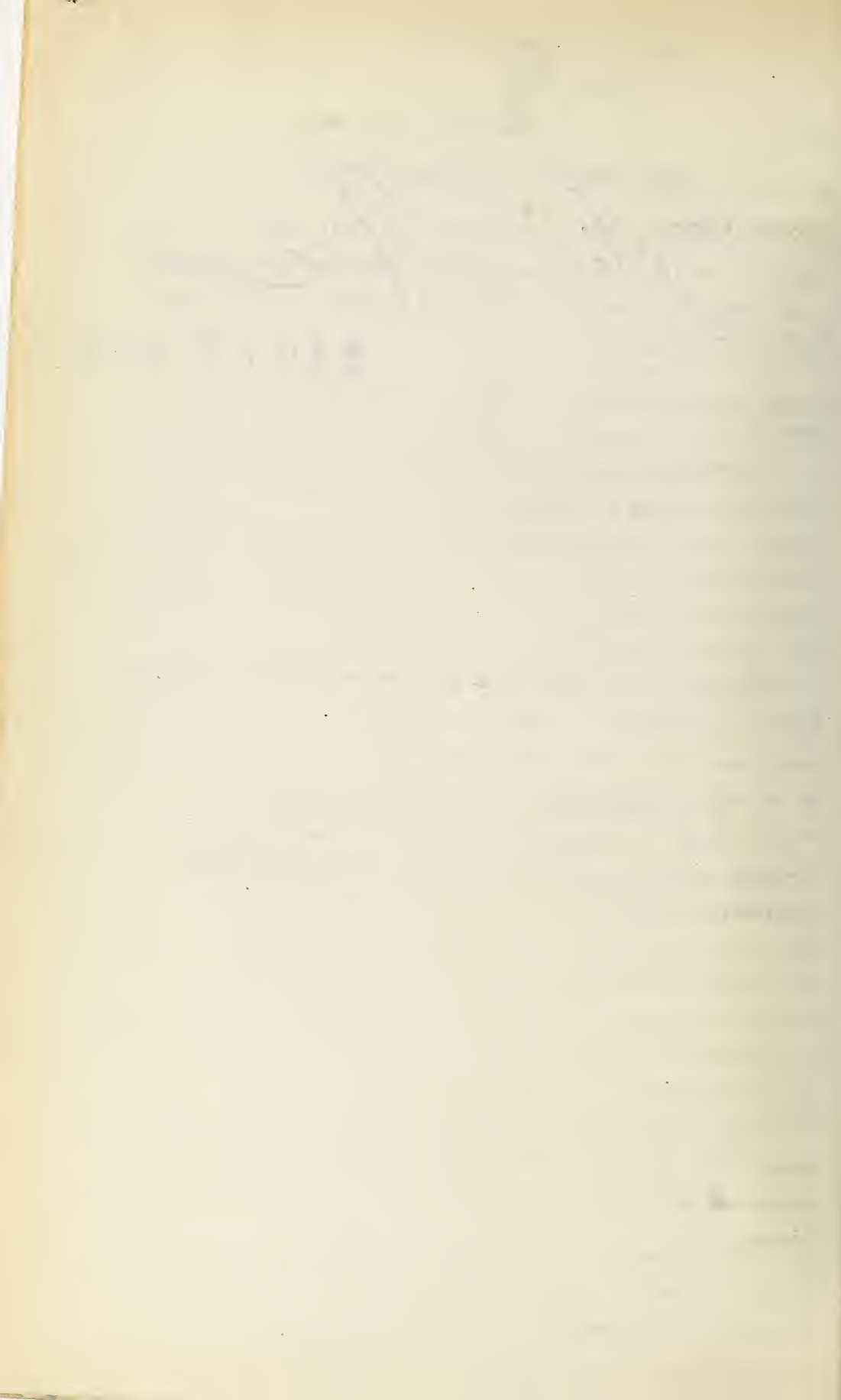
E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On

DEC 9 1925

the opinion of the Court was filed in the

Clerk's office of said Court, in the words and figures
following, to-wit:



Reo Motor Car Company of
Chicago, a corporation,

appellee,

vs.

F. E. Jones,

appellant.

Appeal from the Circuit Court
of Winnebago County.

240 I.A. 678

Jett, J.

In this case the record discloses that the Reo Motor Car Company of Chicago, a corporation, appellee, took a judgment by confession against F. E. Jones, appellant, on a certain promissory note for the sum of \$194.98. A motion was made by appellant to open up the judgment and for leave to plead which said motion was, by the court, denied and this appeal is prosecuted.

It appears that the note in question was given by appellant to secure the payment of a part of the purchase price of three motor trucks which appellant purchased from appellee. The purchase was evidenced by written orders for the trucks executed by the parties April 19, 1923. Two of the trucks were to be delivered on or about April 23, 1923 and the third truck was to be delivered in August 1923. Appellee allowed appellant a credit of \$1500.00 for a used truck delivered to it and took his notes with warrants of attorney to confess judgments attached for the balance which included the note in question. It appears that the \$1500.00 credit was divided and applied to all three of the trucks; \$625.00 each or \$1250.00 on the two delivered at the time of giving the notes and \$250.00 on the third which was to be delivered in August, 1923. Two trucks were delivered in accordance with the order and the notes paid. It is claimed by appellant that the other truck was not delivered and for this reason he refuses to pay the note in question.

~~There~~

The original affidavit filed by the appellant in support of his motion to vacate the judgment and for leave to plead alleges that he purchased, on April 19, 1923 from the plaintiff, (appellee here) three certain motor trucks; that plaintiff agreed in writing to accept payment

certain motor trucks; that plaintiff agreed in writing to accept payment
purchased, on April 12, 1928 from the plaintiff, (appellee here) three
motion to vacate the judgment and for leave to plead a plea that he

THANKS

delivered and for this reason he refuses to pay the note in question.

notes paid. It is claimed by appellant that the other truck was not

1928. Two trucks were delivered in accordance with the order and the

notes and \$20.00 on the third which was to be delivered in August,

\$25.00 each or \$250.00 on the two delivered at the time of giving the

\$1500.00 credit was divided and applied to all three of the trucks;

the balance which included the note in question. It appears that the

his notes with warrants of attorney to enforce judgments attached for

appellant a credit of \$1500.00 for a used truck delivered to it and took

the third truck was to be delivered in August 1928. Appellee allowed

Two of the trucks were to be delivered on or about April 22, 1928 and

by written orders for the trucks executed by the parties April 12, 1928.

which appellant purchased from appellee. The purchase was evidenced

secure the payment of a part of the purchase price of three motor trucks

It appears that the note in question was given by appellant to

this appeal is prosecuted.

and for leave to plead which said motion was, by the court, denied and

sum of \$154.98. A motion was made by appellant to open up the judgment

against F. E. Jones, appellant, on a certain promissory note for the

of Chicago, a corporation, appellee, took a judgment by confession

In this case the record discloses that the Geo Motor Car Company

lett, J.

appellant.

F. E. Jones,

vs.

of Winnebago County.

appeal from the Circuit Court

Chicago, a corporation,

appellee,

Geo Motor Car Company of

1928

October Term, A.D. 1928.

Page 27.

240 I.A. 678

for the same by allowing for a used car delivered by the defendant to the plaintiff \$1500.00, and defendant's promissory notes for the balance; that said \$1500.00 credit for the used car was to be applied as follows: \$625.00 on each of two said certain trucks and \$250.00 on the other of said motor trucks; that thereafter in pursuance of said agreement the plaintiff delivered to the defendant the two certain motor trucks on which \$625.00 each was allowed but has never delivered to the defendant the third motor truck upon which \$250.00 was to be applied though often requested to do so. The affidavit charges that the defendant has paid all of said promissory notes to the plaintiff except the sum of \$194.98; that on account of the refusal of the plaintiff to deliver to the defendant the other certain motor truck on which there was given a credit of \$250.00 plaintiff is indebted to this defendant in the sum of \$250.00 which is \$55.84 more than this defendant is indebted to plaintiff, and the defendant further says that he is not indebted to the plaintiff in any sum; that the said note has been paid; that plaintiff is indebted to the defendant in the sum of \$55.84 and the defendant further says that he verily believes that he has a good defense to the said suit upon the merits as to the whole of plaintiff's demand.

A further motion of defendant to vacate said judgment and for leave to plead to the merits, supported by an affidavit, charges that said promissory note in question and power of attorney in plaintiff's declaration mentioned was executed by defendant to secure monthly payments on a certain contract of purchase; that one of the motor trucks purchased has not been delivered by the plaintiff to the defendant though often requested to do so and in this respect plaintiff has failed to carry out his part of said contract of purchase; that by said contract of purchase plaintiff sold to defendant three certain motor trucks for the sum of \$4605.00; that by said contract of purchase the plaintiff acknowledged payment of \$1500.00 allowance for a used car; and that said used car was delivered to the plaintiff by the defendant and accepted by the plaintiff; that \$1250.00 or \$625.00 each was applied on two of

for the same by allowing for a used car delivered by the defendant to the plaintiff \$1500.00, and defendant's promissory note for the balance; that said \$1500.00 credit for the used car was so applied as follows: \$25.00 of each of two said certain motor trucks on the other of said motor trucks; that thereafter it was determined that the plaintiff delivered to the defendant the two certain motor trucks on which \$25.00 each was allowed, but had never delivered to the defendant the third motor truck upon which \$25.00 was so applied though often requested to do so. The plaintiff charges that the defendant has paid all of said promissory notes to the plaintiff except the sum of \$104.75; that on account of the refusal of the plaintiff to deliver to the defendant the other certain motor trucks on which there was given a credit of \$250.00 plaintiff is indebted to this defendant in the sum of \$250.00 which is \$25.00 more than this defendant is indebted to plaintiff, and the defendant further says that he is not indebted to the plaintiff in any sum; that the said note has been paid; that plaintiff is indebted to the defendant in the sum of \$25.00 and the defendant further says that he really believes that he has a good balance to the said note upon the basis as to the value of plaintiff's goods.

A further portion of defendant to vacate said judgment and for leave to plead to the notes, supported by an affidavit, whereby that said promissory note in question and power of attorney in plaintiff's declaration mentioned was executed by defendant as afore said, and that on a certain contract of purchase; that one of the said motor trucks has not been delivered by the plaintiff to the defendant, although within requested to do so and in this request defendant was failed to carry out his part of said contract of purchase; that by said contract of purchase plaintiff said to defendant that certain motor trucks for the sum of \$250.00; that by said contract of purchase the plaintiff advanced payment of \$150.00 advance for a used car; and that said used car was delivered to the plaintiff by the defendant and received by the plaintiff; that \$250.00 or \$25.00 each was applied on two of

said motor trucks delivered by the plaintiff to the defendant and a credit of \$250.00 on said third certain motor truck to be delivered in August, 1923 which plaintiff refuses to deliver and that by reason of the breach of said contract of purchase the defendant is not indebted to the plaintiff; that said judgment has not been entered in accordance with the said power of attorney in that said judgment is excessive.

The question presented by this appeal is whether the affidavits disclose a clear and equitable reason for opening up the judgment and allowing appellant to plead. There is no dispute as to the facts.

A judgment by confession will not be opened unless the defendant shows a *prima facie* defense to the merits of the case. *Blake et al, vs. The State Bank of Freeport*, 178 Ill. 182-184.

If the affidavits when considered disclose a clear and equitable reason for opening the judgment and allowing the defendant to plead, then it is the duty of the court in the exercise of such equitable powers to so order. *Pearce v. Miller*, 201 Ill. 188.

It is the contention of the appellee that the matters and things set up in the affidavits are merely conclusions and that they fall short of a compliance with the rules requiring the defendant to state a *prima facie* case showing an equitable reason why the judgment should be vacated. It will be observed that the third truck was to be delivered on or about August 23, 1923, and the affidavits show that it was not so delivered and has not been delivered by the plaintiff though often requested. Such statements are not conclusions but are facts and if proven would constitute a defense.

We are of the opinion that by reason of the showing made in the affidavits the court erred in denying the motion to open up the judgment and to permit the defendant to plead to the merits of the case and for that reason the judgment of the Circuit Court of Winnebago County will be reversed and the cause remanded.

Reversed and Remanded.

...this motor truck delivered by the plaintiff to the defendant and ...
credit of \$250.00 on said bill which motor truck is delivered ...
...which plaintiff refuses to deliver ...
the price of said contract of purchase the defendant is not entitled to ...
the plaintiff; that said judgment has been entered in accordance ...
with the said power of attorney in that said judgment is excessive. ...
The question presented by this appeal is whether the affidavit ...
discloses a clear and equitable reason for reversing the judgment and ...
affirming the judgment to be made. There is no dispute as to the facts. ...
A judgment by confession will not be opened unless the defendant ...
shows a prima facie defense to the merits of the case. *Black et al., 44* ...
The State Bank of Wisconsin, 178 Ill. 184-185. ...
If the affidavit when considered discloses a clear and equitable ...
reason for opening the judgment and affirming the judgment to be ...
then it is the duty of the court in the exercise of such equitable ...
powers to so order. *Perice v. Miller, 201 Ill. 138.* ...
It is the contention of the appellee that the matters and things ...
set up in the affidavit are merely conclusions and that they fall short ...
of a compliance with the rule requiring the defendant to state a prima ...
facie case showing an equitable reason why the judgment should be re- ...
versed. It will be observed that the third group was to be delivered up or ...
about August 23, 1923, and the affidavit shows that it was not so de- ...
livered and has not been delivered by the plaintiff though often re- ...
quested. Such statements are not conclusions but are facts and if ...
proven would constitute a defense. ...
We are of the opinion that by reason of the foregoing made in the ...
affidavit the court tried in denying the motion to open up the judgment ...
and to permit the defendant to plead in the merits of the case and for ...
that reason the judgment of the Circuit Court of St. Louis County will ...
be reversed and the cause remanded.

Reversed and Remanded.

STATE OF ILLINOIS, { ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

2

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STATE OF NEW YORK
IN SENATE
January 10, 1900.
REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 1, 1899.
ALBANY:
J. B. LEECH, STATE PRINTER.
1900.

abstract
only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 678

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On

JAN 1 - 1926 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

First National Bank of Galesburg,
a corporation, and Scott Ford,

appellees,

Appeal from the Circuit Court

vs.

of Knox County.

Caroline S. Ford,

appellant.

240 I.A. 678

Partlow, J.

Appellee, First National Bank of Galesburg, filed its bill in the circuit court of Knox county against Scott Ford, Caroline S. Ford, his wife, and their two daughters, Eloise Ford, and Pauline Ford, to foreclose a deed which was in fact a mortgage, upon certain real estate in Galesburg, in which the homestead rights were not waived because the wife did not join in the conveyance. The bill alleged that the homestead was not waived and prayed that it be set off, or that its value be fixed at \$1000.00, as provided by statute. Scott Ford filed an answer admitting the execution of the deed and alleging that it was a mortgage. He denied that the deed conveyed the homestead, but claimed a right of homestead to the extent of \$1000.00, and asked to have the same set off. Caroline S. Ford and her two daughters filed an answer in which they denied that Scott Ford was entitled to a homestead, but alleged that Caroline S. Ford was entitled to a homestead, alleged that Scott Ford and his wife had been living separate and apart since 1917; that Scott Ford was estopped from claiming a homestead as against the homestead rights of his wife for the reason that in the deed or mortgage he had expressly released all right to the same; that since 1917 the wife has had the responsibility of the family, living with her two daughters in the household; that the conveyance to the bank in no wise affected her rights. Upon a hearing the court found in favor of complainant, and granted a decree of foreclosure for \$5602.55, together with a solicitor's fee of \$550.00; found that Scott Ford was entitled to a homestead in the premises of \$1000.00, and that the wife was entitled

First National Bank of Baltimore,

a corporation, and Scott Ford,

appellees,

vs.

vs.

Caroline S. Ford,

appellant.

2401A. 678

Verdict, 1.

Appellee, First National Bank of Baltimore, filed its bill in

the circuit court of Knox county against Scott Ford, Caroline S. Ford,

his wife, and their two daughters, Eloise Ford, and Pauline Ford, to

foreclose a deed which was in fact a mortgage, upon certain real

estate in Baltimore, in which the homestead rights were not waived

because the wife did not join in the conveyance. The bill alleged

that the homestead was not waived and prayed that it be set off, or

that its value be fixed at \$1000.00, as provided by statute. Scott

Ford filed an answer admitting the execution of the deed and alleg-

ing that it was a mortgage. He denied that the deed conveyed the

homestead, but claimed a right of homestead to the extent of \$1000.00,

and asked to have the same set off. Caroline S. Ford and her two

daughters filed an answer in which they denied that Scott Ford was

entitled to a homestead, but alleged that Caroline S. Ford was en-

titled to a homestead, alleged that Scott Ford and his wife had been

living separate and apart since 1917; that Scott Ford was estopped

from claiming a homestead as against the homestead rights of his

wife for the reason that in the deed or mortgage he had expressly

released all right to the same; that since 1917 the wife has had

the responsibility of the family, living with her two daughters in

the household; that the conveyance to the bank in no wise affected

her rights. Upon a hearing the court found in favor of complainant,

and granted a decree of foreclosure for \$502.55, together with a

solicitor's fee of \$50.00; found that Scott Ford was entitled to a

homestead in the premises of \$1000.00, and that the wife was entitled

to inchoate right of dower, appointed commissioners to set off the homestead to him if it could be done, otherwise out of the proceeds of the sale he was to be paid \$1000.00 in lieu of his homestead rights. From this decree appellant, Caroline S. Ford, has appealed to this court.

The only question which she raises on this appeal is whether the homestead rights belong to her or her husband. In support of her contention that she is entitled to the homestead rights, appellant insists that the law will not permit a man to do indirectly what he is prohibited from doing directly; that if the court sustains the decree giving Scott Ford the homestead to the exclusion of the wife and daughters, that he, by arrangement with the bank, is cutting his wife out of her homestead rights; that under the decree Mrs. Ford is to be removed from the premises and the homestead awarded to her husband without any provision for another homestead as required by law, and without any intention on his part to have anything to do with his family.

The evidence shows that in 1900, Scott Ford purchased the premises in question. He built a house which he has occupied with his family since that time as a homestead. The evidence of the wife was that since 1917, she and her husband have been estranged, they do not live together as husband and wife, and this was without her fault; that he has not supported the family as its head; that they all lived on the premises; that she objected to her husband becoming involved with the bank financially; that she and the daughters have, in fact, kept the house in repair for several years; that she contributed to the purchase price of the property; that he bought a quart of milk, or a little bacon, now and then, but had not contributed a cent towards bread, sugar, or other provisions since 1917; that he had not ~~clothed~~ ~~provided~~ his wife for years and his daughters have both worked and earned wages and have been clothing the mother; that he contributed little towards the repairs on the place; that after 1922, he gave the wife \$9.00 a week, but that would not pay the grocery and meat bill;

to exercise right of dower, appointed commissioners to set off the homestead to him as it could be done, otherwise one of the proceeds of the sale he was to receive \$1000.00 in lieu of his homestead rights. From this decree applicant, including a term, has appealed to this court.

The only question which the relief on this appeal is whether the homestead rights belong to her or her husband. To support her contention that she is entitled to the homestead rights, applicant insists that the law will not permit a man to so indirectly what he is prohibited from doing directly; that if the court sustains the decree giving to her the homestead in the exclusion of the wife and daughters, that he, by arrangement with the bank, is causing his wife out of her homestead rights; that under the decree the wife has to be removed from the premises and the homestead awarded to her husband without any provision for another homestead as required by law, and without any intention on his part to have anything to do with his family.

The evidence shows that in 1900, about Ford purchased the premises in question. He built a house upon the premises and the wife was living there at the time as a homestead. The evidence of the wife was that since 1917, she and her husband have been separated, they do not live together as husband and wife, and this was without her fault; that he has not supported the family as the law; that they will never on the premises; that she objected to her husband remaining involved with the bank financially; that she and the daughter have, in fact, kept the house in repair for several years; that she contributed to the purchase price of the property; that he bought a part of the lot in 1912, about, now and then, but had not contributed a cent to the purchase price, and that provisions since 1914; that he had not earned wages and had been allowing the mother; that he contributed little towards the repairs on the place; that after 1912, he gave the wife \$2.00 a week, but that would not pay the property and keep it;

that he has never paid anything since the previous November; that he paid the taxes and made some repairs on the property; that other repairs were made by the bank and by the daughters. One of the daughters testified that the father and mother were living separate and apart without the fault of the mother, and that the daughters were contributing to her support.

Section 1, Chapter 52, provides that every householder, having a family, shall be entitled to a homestead of \$1000.00 in the premises occupied by him as a residence, which shall be exempt. Section 4 provides that no release, waiver, or conveyance of the estate so exempt, shall be valid unless the same is in writing subscribed by said householder and his wife, and acknowledged in the same manner as conveyances of real estate are required to be acknowledged; and in all cases where such release shall be taken by way of mortgage or security, the same shall only be operative as to such specific release, waiver, or conveyance; and where the same includes different pieces of land, or the homestead is of greater value than \$1000.00, said land shall first be sold before resorting to the homestead, and in case of the sale of such homestead, if any balance shall remain after the payment of the debt and costs, such balance shall, to the extent of \$1000.00, be exempt, and be applied upon such homestead exemptions in the manner provided by law. Section 8 provides that in the enforcement of a lien, in a court of equity, upon premises including the homestead, if such right is not waived or released, as provided in this Act, the court may set off the homestead and decree the sale of the balance of the premises; or if the value of the premises exceeds the exemption, and the premises cannot be divided, may order the sale of the whole, and the payment of the amount of the exemption to the person entitled thereto. Section 16, Chapter 68, provides that neither the husband nor wife can remove the other or their children from their homestead without the consent of the other, unless the owner of the property shall in good faith, provide another homestead suitable to the condition in life of the family.

that he has never said anything since the previous November; that he paid the taxes and made some repairs on the property; that other repairs were made by the bank and by the brother. One of the daughters testified that the father and mother were living separately and apart without the help of the mother, and that the daughters were contributing to her support.

Section 1, Chapter 52, provides that every homestead, having a family, shall be entitled to a homestead of 1000.00 in the premises occupied by him as a residence, which shall be exempt. Section 4 provides that no release, conveyance, or conveyance of the estate so exempt, shall be valid unless the same is in writing subscribed by said homemaker and his wife, and acknowledged in the same manner as conveyances of real estate are required to be acknowledged; and in all cases where such release shall be taken by way of mortgage or security, the same shall only be operative as to such specific release, conveyance, or conveyance; and where the same involves different pieces of land, or the homestead is of greater value than 1000.00, said land shall first be sold before resorting to the homestead, and in case of the sale of such homestead, if any release shall remain after the payment of the debt and costs, such balance shall, to the extent of 1000.00, be exempt, and be applied upon such homestead exemption in the manner provided by law. Section 8 provides that in the enforcement of a lien, in a court of equity, upon premises including the homestead, if such right is not waived or released, as provided in this Act, the court may set off the homestead and decree the sale of the balance of the premises; or if the value of the premises exceeds the exemption, and the premises cannot be divided, may order the sale of the whole, and the payment of the amount of the exemption to the person entitled thereto. Section 12, Chapter 52, provides that neither the husband nor wife can remove the other or their children from their homestead without the consent of the other, unless the owner of the property shall in good faith provide another homestead suitable to the condition in life of the family.

In *McCauley v. Jones*, 295 Ill. 614, it was held that this last section does not enlarge the homestead estate; that the owner of a homestead estate is not entitled to retain the exclusive possession of real estate worth more than \$1000.00 because the property is incapable of division and the homestead estate in it therefore cannot be assigned, but that a court of equity under its general chancery power has jurisdiction to enter a decree adjusting the respective rights of the heirs, devisees, or grantees of the owner of the fee and the person entitled to the homestead estate. Upon the application of such heirs, devisees or grantees a homestead may be set off, or if that cannot be done, the court may require the holder of the estate to surrender the possession of the premises upon the payment of \$1000.00.

The deed or mortgage in this case was not signed by the wife, therefore the homestead was not released as provided in section four either as to Ford or his wife. This was recognized in the bill filed to foreclose. The premises were worth about \$10,000.00. The decree complied in all respects with sections four and eight, and was valid as far as the rights of the bank were concerned. The bank was entitled to a sale subject to the homestead and dower, as provided in the decree.

Where a wife is compelled by her husband, against her will and without her fault, to live separate and apart from him, he cannot deprive her of her homestead estate by conveying the land by deed in which the wife does not join. *Blankenship v. Hall*, 233 Ill. 116. Under such circumstances the right of homestead may be in the wife, and this is true even though the husband and wife are living in the same house, but not as husband and wife. *Bobowsky v. Bobowsky*, 142 Ill. 524; *Jones v. Jones*, 281 Ill. 595. During the lifetime of the husband who is living with the family, the general rule is, that the right of the wife to a homestead is analogous to her inchoate right of dower and is not a freehold estate. *Taylor v. Taylor*, 223 Ill. 423. Where the husband is living, and resides with

In *McGraw v. Jones*, 225 Ill. 614, it was held that the owner of a section does not enlarge the homestead estate; that the owner of a homestead estate is not entitled to retain the exclusive possession of real estate worth more than \$1000.00 because the property is in- capable of division and the homestead estate in it therefore cannot be assigned, but that a court of equity under its general chancellor power has jurisdiction to enter a decree enjoining the respective rights of the heirs, devisees, or grantees of the owner of the fee and the person entitled to the homestead estate. Upon the applica- tion of such heirs, devisees or grantees a homestead may be set off, or if that cannot be done, the court may require the holder of the estate to surrender the possession of the premises upon the payment of \$1000.00.

The deed or mortgage in this case was not signed by the wife, therefore the homestead was not released as provided in section four either as to Ford or his wife. This was recognized in the bill filed to foreclose. The premises were worth about \$10,000.00. The decree complied in all respects with sections four and eight, and was valid as far as the rights of the bank were concerned. The bank was entitled to a sale subject to the homestead and dower, as pro- vided in the decree.

Where a wife is compelled by her husband, against her will and without her fault, to live separate and apart from him, he cannot deprive her of her homestead estate by conveying the land by deed in which the wife does not join. *Marshall v. Hall*, 203 Ill. 116. Under such circumstances the right of homestead may be in the wife, and this is true even though the husband and wife are living in the same house, but not as husband and wife. *McGraw v. Jones*, 225 Ill. 614.

Marshall v. Jones, 281 Ill. 524. During the lifetime of the husband who is living with the family, the general rule is that the right of the wife to a homestead is subordinate to her in- dicate right of dower and is not a freehold estate. *Taylor v. Taylor*, 225 Ill. 423. Where the husband is living, and resides with

his family, he is generally the householder and the head of the family. It is only upon his death, or when he deserts his family, or drives them away, that the homestead vests in the wife.

It is the intent and purpose of the law, as far as possible, to protect the entire family in the household rights. When the homestead exceeds \$1000 in value and has been sold and the \$1000 paid to the person entitled thereto, the \$1000 may be in danger of being lost, spent or squandered by reason of the fact that it was in cash. If the head of the family has not, by his misconduct, forfeited his right of homestead, he is entitled to the \$1000 in cash regardless of the danger that it may be lost, spent or squandered. Ford was living. He slept at home and took part of his meals there. He provided, to some extent, for the household expenses, paid some money to his wife, paid the taxes, made certain repairs, and purchased certain provisions for the family. The mere fact that he and his wife did not agree, that they were estranged and quarreled, did not live together as husband and wife should live, that he did not pay all of the family expenses, or the cost of maintaining the home, and part of this expense was paid by his daughters, was not sufficient to justify the chancellor in holding that he had forfeited his right of homestead and that the right had vested in the wife.

We find no reversible error and the decree will be affirmed.

Decree affirmed.

his family, but is generally the head of the family. It is only upon his death, or when he transfers his family, or leaves them away, that the household stands in his place. It is the intent and purpose of the law, as far as possible, to protect the entire family in the household rights. When the husband stands exceeds \$1000 in value and has been sold and the \$1000 paid to the person entitled thereto, the \$1000 may be in payment of some debt, spent or squandered by reason of the fact that it was in cash. If the head of the family has not, by his misconduct, forfeited his right of protection, he is entitled to the \$1000 in cash regardless of the manner that it may be lost, spent or squandered. When such living, he also at home and took part in the household. He provided, to some extent, for the household expenses, paid some money to his wife, paid the taxes, made certain repairs, and purchased certain provisions for the family. He was told that he and his wife did not agree, that they were estranged and quarreled, and not live together as husband and wife should live, that he did not pay all of the family expenses, or the cost of maintaining the home, and part of this money was paid by his daughter, who not willing to transfer the ownership to him holding that he had forfeited his right of protection and that the right had vested in the wife.

It is no reversible error and the matter will be affirmed.

Reversed and affirmed.

STATE OF ILLINOIS, } ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
Feb. in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

[Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.]

STATE OF ALABAMA
COUNTY OF [illegible]
I, [illegible], Clerk of the Court, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the Court.
Witness my hand and the seal of the Court at the City of Montgomery, this [illegible] day of [illegible] 19[illegible].
[illegible]
Clerk of the Court

35
abstract only

240 I.A. 679

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one-thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
JAN 19 1926

the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

Leonard Stuckert, a minor
By John Stuckert, his father
and next friend,

240 I.A. 679

Plaintiff in Error,

Error to the Circuit Court
of La Salle County.

vs.

James J. Moran,

Defendant in Error.

Partlow, J.

Plaintiff in error, Leonard J. Stuckert, a minor, by John Stuckert, his next friend, began an action on the case in the circuit court of La Salle County, against defendant in error, James J. Moran, for malpractice. At the close of the evidence on behalf of plaintiff in error the court directed a verdict in favor of defendant in error, and a writ of error has been prosecuted from this court to review the judgment.

The declaration consisted of three counts all of which alleged, in substance, that defendant in error was a duly licensed physician and surgeon, practicing his profession, and was retained by plaintiff in error to treat him for hire for a certain sickness. The first count further alleged that defendant in error treated the plaintiff in error for to-wit, five months; that not regarding his duty, during that time, he so unskillfully and negligently conducted himself in the premises that by and through his want of skill and care, the sickness of plaintiff in error became greatly increased and aggravated, other maladies were caused, and unnecessary injuries inflicted upon him; that plaintiff underwent great annoyance, anguish, distress, and bodily injury, became greatly reduced, weakened and injured in body, and has ever since so continued to suffer. The second count alleged that on March 15, 1921, the plaintiff in error was suffering from congestion of the lungs, or disorder within the pleural

2401.A.679

Leonard Stuckert, a minor
By John Stuckert, his father
and next friend,

Plaintiff in Error,

Error to the Circuit Court
of La Salle County.

vs.

James J. Moran,

Defendant in Error.

Partow, J.

Plaintiff in error, Leonard J. Stuckert, a minor, by John Stuckert, his next friend, began an action on the case in the circuit court of La Salle County, against defendant in error, James J. Moran, for malpractice. At the close of the evidence on behalf of plaintiff in error the court directed a verdict in favor of defendant in error, and a writ of error has been prosecuted from this court to review the judgment.

The judgment consisted of three counts all of which alleged, in substance, that defendant in error was a duly licensed physician and surgeon, practicing his profession, and was retained by plaintiff in error to treat him for a certain ailment. The first count further alleged that defendant in error treated the plaintiff in error for to-wit, five months, that not respecting his duty, during that time, he so negligently and recklessly conducted himself in the premises that by and through his want of skill and care, the sickness of plaintiff in error became greatly increased and aggravated, other ailments were caused, and unnecessary injuries inflicted upon him; that plaintiff in error sustained great pecuniary, mental, distress, and bodily injury, became greatly reduced, weakened and injured in body, and was ever since so continued to suffer. The second count alleged that on March 15, 1931, the plaintiff in error was suffering from collection of the lungs, or pleurisy in the right

2.

cavity; that he was taken to St. Mary's Hospital in Spring Valley, and on March 20, 1921, defendant in error cut a large incision in the chest or pleural cavity of plaintiff in error, and inserted drainage, consisting of a rubber tube, three-fourths of an inch in diameter, and five inches long, which was to remain for thirty-six hours to carry off the fluid or pus; that it was the duty of the defendant in error to exercise due care and skill in inserting the tube and fastening the same so it could not slip, or be drawn into the wound, yet the defendant in error carelessly, negligently and unskillfully so inserted and fastened the tube in said incision that the tube slipped into, or was drawn into the body of the plaintiff in error, where it remained for four months, by means whereof the plaintiff became sick, sore, lame, etc. The third count was substantially the same as the second and in addition it charged the duty on the part of the defendant in error, after the tube slipped or was drawn into plaintiff in error's body, to remove the same, but that by reason of his want of care and skill in that behalf he permitted said tube to remain in said body for, to-wit, four months. To the declaration the general issue was filed.

The evidence consisted of the testimony of plaintiff in error, his father, Sister Edwina of St. John's Sanitarium, Springfield, and Dr. Charles W. Compton of Springfield, who finally secured the tube, and shows that plaintiff in error was nineteen years of age in October, 1920, was in good health, and weighed about one hundred and fifty pounds. On December 21, 1920, he had an attack of pneumonia in his right lung, and was confined to his bed about three weeks, after which he recovered so as to be about the house. He later began to suffer from empyema, or pus in the pleural cavity. He was then living with his father in Cherry, Illinois, and was treated for pneumonia by Dr. Westmore, now deceased. He had pain and a slight swelling in his chest and was informed by Dr. Westmore there probably was pus in the cavity. He went to defendant in error at Spring Valley

cavity; that he was taken to St. Mary's Hospital in Boston, and on March 20, 1931, defendant in error cut a large incision in the chest or pleural cavity of plaintiff in error, and inserted drainage, consisting of a rubber tube, the insertion of which in plaintiff's chest, and five inches long, which was to remain for thirty-six hours to carry off the fluid or pus; that it was the duty of the defendant in error to exercise due care and skill in inserting the tube and fastening the same so it could not slip, or be drawn into the wound. Yet the defendant in error carelessly, negligently and unskillfully so inserted and fastened the tube in said incision that the tube slipped into, or was drawn into the body, of the plaintiff in error, where it remained for four months, by means thereof the plaintiff became sick, sore, lame, etc. The third count was substantially the same as the second and in addition it charged the duty on the part of the defendant in error, after the tube slipped or was drawn into plaintiff in error's body, to remove the same, but that by reason of his want of care and skill in that behalf he permitted said tube to remain in said body for, to-wit, four months. To the declaration the fourth issue was added.

The evidence consisted of the testimony of plaintiff in error, his father, Sister Edwin of St. John's Sanitarium, Springfield, and Dr. Charles W. Compton of Springfield, who jointly asserted the tube, and shows that plaintiff in error was nineteen years of age in October, 1930, was in good health, and weighed about one hundred and fifty pounds. On December 21, 1930, he had an attack of pneumonia in his right lung, and was confined to his bed about three weeks, after which he recovered so as to be about the house. He later began to suffer from emphysema, or pus in the pleural cavity. He was then living with his father in Perry, Illinois, and was treated for pneumonia by Dr. Westmore, now deceased. He had pain and a slight swelling in his chest and was informed by Dr. Westmore that there possibly was pus in the cavity. He went to defendant in error at Spring Valley

3.

and was informed that he had pus in the pleural cavity. He went to the hospital in Spring Valley, and on March 15, 1921, an incision about two inches long was made in his right breast by defendant in error and a rubber tube about three inches long and three-eighths of an inch in diameter was inserted for drainage. On the following day the wound was dressed by a sister at the hospital, and plaintiff in error testified that he saw the end of the tube protruding about an inch out of the incision. The defendant in error assisted in dressing the wound on that day. On the next day plaintiff in error was taken to the dressing room, and after the bandages were removed it was discovered that the tube was missing. The nurse called the defendant in error and he told her that the tube had probably been lost in the dressing. Plaintiff in error was put under a fluoroscope, and he testified that defendant in error, in the presence of Dr. Dunn, stated that the tube was in the pleural cavity. He also testified that at all times thereafter defendant in error assured him that the tube was not in the pleural cavity. After the wound was dressed, another tube was inserted, and plaintiff in error testified that when it was inserted he complained that it touched the missing tube within him. In the end of this second tube defendant in error put a safety pin to keep it from slipping into the incision. Before putting in the second tube the defendant in error probed the wound with a pair of tweezers to locate the tube but did not find it. Two days later another pocket of pus formed higher up and defendant in error put in another tube, and four days later a third tube was inserted. A third operation was performed about a month later, an incision was made in the back, and a tube was put in this incision. Plaintiff in error testified that defendant in error cut three openings in the breast and inserted tubes. He also testified that in the latter part of June, the defendant in error took him out for an automobile ride, told him he had a chronic abscess, and he was going to send him some place where he would be all right he hoped in a month and a half or so.

and was informed that he had not the witness testify. He went to the hospital in North Valley, and on March 20, 1941, he testified that two inches were made in his right breast by a catheter of error and a rubber tube about three inches long and three-eighths of an inch in diameter was inserted for drainage. On the following day the wound was dressed by a sister at the hospital, and Plaintiff in error testified that he saw the end of the tube protruding about an inch out of the incision. The defendant in error assisted in dressing the wound on that day. On the next day Plaintiff in error was taken to the dressing room, and after the bandages were removed it was discovered that the tube was missing. The nurse called the defendant in error and he told her that the tube had probably been lost in the dressing. Plaintiff in error was put under a fluoroscope, and he testified that defendant in error, in the presence of Dr. Dunn, stated that the tube was in the pleural cavity. He also testified that at all times thereafter defendant in error assured him that the tube was not in the pleural cavity. After the wound was dressed, another tube was inserted, and Plaintiff in error testified that when it was inserted he complained that it touched the pleural tube within him. In the end of this second tube defendant in error was a variety of times it from slipping into the incision. Before getting in the second tube the defendant in error read the woman with a view of means to locate the tube but did not find it. Two days later another pocket of the former fluid of and defendant in error put in another tube, and that tube later a third tube was inserted. A third operation was performed about a month later, an incision was made in the back, and a tube was put in this incision. Plaintiff in error testified that defendant in error cut the opening in the breast and inserted tubes. He also testified that in the latter part of June, the defendant in error took him out for an automobile ride, told him he had a whiskey evening, and he was going to send him home. These were the only times that he had been in a car with a girl or woman.

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The plaintiff in error was subsequently removed to St. John's Sanitarium in Springfield, put to bed and given treatments. Plaintiff in error testified that sometime in September, while being dressed by one of the nurses in the hospital, the tip of a rubber glove came out of one of the wounds, and when this occurred, plaintiff in error testified that he insisted that the tube must be still in him. The plaintiff in error is not corroborated with reference to the tip of the glove coming out of the wound. The sister at the hospital who dressed him had no recollection of any such occurrence. An x-ray was taken of the plaintiff's chest, what appeared to be the tube was located, he was taken to St. John's Hospital in Springfield, where he was examined by Dr. Compton under a fluoroscope. The tube was located in the pleural cavity. Dr. Compton cut an incision, took out a piece of the rib, made one opening in the front and another in the rear, and on the following morning the tube was located at the opening in the rear under the shoulder and was removed.

Plaintiff in error testified that the tube was placed in a bottle, it was offered in evidence, and there is evidence that it bears no marks of having any safety pin or needle puncture in it. Plaintiff in error testified that the wounds occasionally broke open and caused trouble; that he was able to do some work but could not perform very much hard work.

Dr. Compton testified that when drainage by means of a tube is inserted it is necessary to fasten the tube in some way, either by silkworm suture sewed to the flesh, or by an ordinary safety pin inserted through the end of the tube, to prevent the tube from being drawn in or from slipping into the incision.

It is insisted as ground for reversal that the court committed error in directing a verdict for defendant in error.

Physicians are not required to possess the highest degree of skill. It is their duty to exercise reasonable and ordinary care, skill, and diligence in the practice of their profession. Their

The Plaintiff in error was subsequently removed to St. John's Sanitarium in Springfield, but to bed and given the Plaintiff in error testified that sometime in September, while being dressed by one of the nurses in the hospital, the tip of a rubber glove came out of one of the woman's, and when this occurred, Plaintiff in error testified that he insisted that the tube must be still in him. The Plaintiff in error is not corroborated with reference to the tip of the glove coming out of the wound. The sister at the hospital who dressed him had no recollection of any such occurrence. An X-ray was taken of the Plaintiff's chest, and appeared to be the tube was located, he was taken to St. John's Hospital in Springfield, where he was examined by Dr. Compton under a fluoroscope. The tube was located in the pleural cavity. Dr. Compton cut an incision, took out a piece of the rib, made one opening in the front and another in the rear, and in the following morning the tube was located at the opening in the rear under the shoulder and was removed.

Plaintiff in error testified that the tube was placed in a bottle, it was offered in evidence, and there is evidence that it bears no marks of having any safety pin or needle attached to it. Plaintiff in error testified that the woman occasionally broke open and caused trouble; that he was able to do some work but could not perform very much hard work.

Dr. Compton testified that when drainage by means of a tube is inserted it is necessary to fasten the tube in some way, either by a suture sewed to the flesh, or by an ordinary safety pin inserted through the end of the tube, to prevent the tube from being drawn in or from slipping into the incision.

It is insisted as grounds for reversal that the court committed error in directing a verdict for defendant in error. Physicians are not required to possess the highest degree of skill. It is their duty to exercise reasonable and ordinary care, skill, and diligence in the practice of their profession. Their

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failure to exercise such a degree of care and skill renders them liable for damages. *Quinn vs. Donovan*, 85 Ill. 194; *Hallen vs. Means*, 82 Ill. 372; *McKee vs. Allen*, 94 Ill. App. 147; *Moline vs. Christie*, 180 Ill. App. 334. The mere fact that there are bad results, or that an injury was caused by reason of a mistake in judgment, is not sufficient to justify a recovery. *Sims vs. Parker*, 41 Ill. App. 282; *Phedus vs. Mather*, 181 Ill. App. 274; *Danson vs. Allen*, 191 Ill. App. 399; *Graiziger vs. Henssler*, 229 Ill. App. 365. The doctrine of *res ipsa loquitur* does not apply in cases of this kind, and the burden of proof is upon the plaintiff to prove the negligence charged in the declaration. Whether or not the treatment was ordinarily skillful and the physician's conduct and management of the case was that of an ordinarily careful and skillful physician is largely an expert question to be determined from the testimony of witnesses learned and experienced in that kind of service. *Goodman vs. Bigler*, 133 Ill. App. 301; *Kruger vs. McCaughey*, 149 Ill. App. 440; *Moline vs. Christie*, 180 Ill. App. 334; *Phedus vs. Mather*, 181 Ill. App. 274; *Graiziger vs. Henssler*, 229 Ill. App. 365.

The main question for determination is whether or not, under the authorities cited, there was any evidence in the record fairly tending to support the allegations of the declaration sufficient to entitle plaintiff in error to have his case submitted to the jury. The first count of the declaration charged general negligence and unskillfulness. The second charged that defendant in error so carelessly, negligently and unskillfully inserted and fastened the tube that it slipped or was drawn into the body. The third is that after the tube entered the body that by want of care and skill it was permitted to remain in the body. All of the evidence offered was in support of the allegations that the tube was improperly fastened, or was not fastened at all, and in support of the allegation that after the tube entered the body that it should have been removed by defendant in error. The only medical evidence was that of Dr. Compton who testified as to the manner in which such a tube should

Compton who testified as to the manner in which such a tube should
be inserted in error. The only medical evidence was that of Dr.
offered was in support of the allegation that the tube was improperly
fastened, or was not released at all, and in support of the allegation
that after the tube entered the body that it should have been removed
and skill it was permitted to remain in the body. All of the evidence
third is that after the tube entered the body that by want of care
fastened the tube that it slipped or was drawn into the body. The
in error as carelessly, negligently and unskillfully inserted and
negligence and unskillfulness. The second charged that defendant
to the jury. The first count of the declaration charged general
sufficient to entitle plaintiff in error to have his case submitted
fairly tending to support the allegations of the declaration
under the authorities cited, there was any evidence in the record
The main question for determination is whether or not,
274; Graetzinger vs. Henssler, 229 Ill. App. 368.
vs. Christie, 180 Ill. App. 324; Phelps vs. Mather, 181 Ill. App.
133 Ill. App. 801; Krueger vs. McCampney, 149 Ill. App. 440; Malone
learned and experienced in that kind of service. Goodman vs. Bigler,
expert question to be determined from the testimony of witnesses
that of an ordinarily careful and skillful physician is largely an
skillful and the physician's conduct and management of the case was
in the declaration. Whether or not the treatment was ordinarily
burden of proof is upon the plaintiff to prove the negligence charged
was in no position does not apply in cases of this kind, and the
299; Graetzinger vs. Henssler, 229 Ill. App. 368. The doctrine of
Phelps vs. Mather, 181 Ill. App. 324; Daniels vs. Allen, 191 Ill. App.
sufficient to justify a recovery. Sims vs. Barker, 41 Ill. App. 284;
an injury was caused by reason of a mistake in judgment, is not
180 Ill. App. 324. The mere fact that there was such a mistake, or that
82 Ill. 372; McKee vs. Allen, 94 Ill. App. 147; Miller vs. Christie,
liable for damages. Quinn vs. Bonover, 85 Ill. 194; Miller vs. Keen,
failure to exercise such a degree of care and skill renders the

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be fastened. This evidence is very meager. It does not go into detail as to the manner in which the silkworm suture should be fastened. Plaintiff in error was under an anesthetic at the time the tube was inserted and did not know it had been inserted until the next morning when the wound was dressed. He testified that at that time it was not fastened to the flesh on the side of the wound and that there were no holes in the tube. He also testified that after the tube was finally removed there was no hole in it made by a pin or a needle. This evidence, taken in connection with the evidence of Dr. Compton that it was necessary to fasten the tube either by a silkworm suture sewed to the flesh, or by a safety pin inserted through the end of the tube, was sufficient to fairly tend to support the charge in the second count of the declaration, and entitle plaintiff in error to have the jury pass upon the facts presented.

Under the third count of the declaration, while there was no medical evidence that an immediate removal of the tube was necessary after it entered the body, still the fact that the tube was drawn into the body where it did not belong was some evidence that defendant in error should have made prompt effort to remove it. His subsequent efforts to locate and extract it tends to show that it was his duty to do so.

We are of the opinion that the court improperly directed a verdict, and the judgment will be reversed and the cause remanded.

Reversed and Remanded.

be tested. This evidence is very recent. It does not go into detail as to the manner in which the silk worm suture should be fastened. Plaintiff in error was under an aesthetic at the time the tube was inserted and did not know it and knew inserted until the next morning when the wound was dressed. He testified that at that time it was not fastened to the flesh on the side of the wound and that there were no holes in the tube. He also testified that after the tube was finally removed there was no hole in it made by a pin or a needle. This evidence, taken in connection with the evidence of Dr. Compton that it was necessary to insert the tube either by a silk worm suture sewed to the flesh, or by a safety pin inserted through the end of the tube, was sufficient to fairly tend to support the charge in the second count of the indictment, and entitle Plaintiff in error to have the jury pass upon the facts presented.


Under the third count of the indictment, while there was no medical evidence that an immediate removal of the tube was necessary after it entered the body, still the fact that the tube was drawn into the body where it did not belong was some evidence that defendant in error should have made prompt effort to remove it. His subsequent efforts to locate and extract it tends to show that it was his duty to do so.

There are of the opinion that the court improperly directed a verdict, and the judgment will be reversed and the cause remanded. Reversed and remanded.

STATE OF ILLINOIS, }
SECOND DISTRICT. } ss.

I. JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 7th day of
Mar. in the year of our Lord one thousand
nine hundred and twenty-six.


Clerk of the Appellate Court.

57
Abstract only

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 679

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
JAN 19 1926 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

Angela McKay, by C. M. McKay,
her next friend,

appellee,

Appeal from the Circuit Court

vs.

of Knox County.

Briggs Coffman,

appellant.

240 I.A. 679

Partlow, J.

Appellee, Angela McKay, by C. M. McKay, her next friend, obtained a judgment in the circuit court of Knox county against appellant, Briggs Coffman, for \$750.00, for personal injuries, and an appeal has been prosecuted to this court.

At the time of the accident Angela McKay was five years, seven months, and ten days old. She lived with her parents on the east side of Holton street in Galesburg. On Sunday, April 29, 1923, at about 12:45 P. M. she was on the west side of Holton street, opposite her home, playing with some small children. Appellant was driving an electric automobile north on the east side of Holton street, at from six to ten miles per hour. When the automobile was just south of the place of the accident the child started across the street to her home on the east side. The evidence on behalf of appellant is that she ran into his automobile, while the evidence on behalf of appellee is that she was struck by the automobile and knocked down. Her right leg was broken about three to six inches below the hip. She was in the hospital about six weeks, she suffered intense pain, later she had to walk with a crutch for some time, but finally she practically recovered. No complaint is made as to any ruling on evidence, or as to the weight of the evidence, and it is admitted that there was evidence fairly tending to support the judgment. For this reason it will be unnecessary to state the facts in greater detail. It is, however, insisted by appellant that the evidence was close and for that reason the instructions should have been accurate.

The amended declaration contained three counts. The first charged general negligence; the second alleged that appellant gave no

October Term, 1933.

Angela McKay, by C. M. McKay,

her next friend,

Appellee,

Appelant from the Circuit Court

of Knox County,

vs.

Bridge Coffman,

Appellant.

2401 A. 679

Partlow, J.

Appellee, Angela McKay, by C. M. McKay, her next friend, obtained a judgment in the circuit court of Knox county against appellant, Bridge Coffman, for \$750.00, for personal injuries, and an appeal has been prosecuted to this court.

At the time of the accident Angela McKay was five years, seven months, and ten days old. She lived with her parents on the east side of Bolton street in Glasgow. On January, April 25, 1932, at about 12:45 P. M. she was on the west side of Bolton street, near her home, playing with some small children. Appellant was driving an electric automobile north on the east side of Bolton street, at from six to ten miles per hour. When the automobile was just south of the place of the accident the child started across the street to her home on the east side. The evidence on behalf of appellee is that she ran into his automobile, while the evidence on behalf of appellee is that she was struck by the automobile and thrown down. Her right leg was broken about three to six inches below the hip. She was in the hospital about six weeks, and suffered intense pain. Later she had to walk with a crutch for some time, but finally she practically recovered. The complaint is made as to any ruling on evidence, or as to the weight of the evidence, and it is admitted that there was evidence fairly tending to support the judgment. For this reason it will be unnecessary to review the facts in greater detail. It is, however, insisted by appellant that the evidence was close and for that reason the instructions should have been given. The amended declaration contained three counts. The first charged general negligence; the second alleged that appellant gave no

warning of his approach, contrary to the statute; and the third alleged that appellant negligently and carelessly failed to keep a proper watch and lookout for persons crossing Holton street.

The ninth instruction on behalf of appellee, told the jury that "they should take into consideration the whole of the evidence and all of the facts and all the circumstances proved on the trial." Appellant contends that this clause would lead the jury to believe that they should consider the evidence, the circumstances proved on the trial, and all the other facts, separating the facts from the evidence and the circumstances proved on the trial, and it allowed the jury to consider facts not in evidence. In support of this contention *Balenovic v. Ansick*, 181 Ill. App. 660, is cited. The case cited does not sustain the contention of appellant. The clause of the instruction in that case was as follows: "and from all of these facts, as shown by the evidence, and from all other facts and circumstances, the jury must decide on which side is the preponderance." The instruction in that case was not limited to facts and circumstances proved on the trial, and the court held that under such an instruction the jury might consider facts not in evidence. The instruction in the case at bar is entirely different. It limited the facts and circumstances to be considered to those which were in evidence. It was in no wise misleading or erroneous.

The tenth instruction on behalf of appellee told the jury "that the word 'accident' as used in these instructions is used to designate or denote the occurrence or event which the plaintiff claims resulted in injury to her." It is insisted that this was not the sense in which the word accident was used in several other instructions; that appellant's eleventh modified instruction was to the effect that if the injury complained of was the result of a mere accident which occurred without negligence on the part of appellant, the jury should find the appellant not guilty; that if the word accident as used in the eleventh instruction meant a mere occurrence that the instruction would have no meaning whatever, and for that reason appellee's tenth instruction was prejudicial.

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occurred without negligence on the part of appellant, the jury should
find the appellant not guilty; that if the word accident as used in
the eleventh instruction meant a mere occurrence that the instruction
would have no meaning whatever, and for that reason appellee's tenth
instruction was prejudicial.

The Standard Dictionary defines an accident as an occurrence or event. In *Kaminski v. Chicago City Railway Company*, 181 Ill. App. 706, on page 710, the court said: "It clearly appears from a reading of the entire instruction that the word 'accident' was used to designate the occurrence or happening in question, and must have been so understood by the jury." We think the definition of an accident as given in the tenth instruction was in accordance with this rule of law and there was no error in giving it.

The sixteenth instruction on behalf of appellee, after stating certain facts, in defining the duty of appellant, told the jury that if appellant "negligently failed to use every reasonable precaution at and immediately before the time of the injury to the plaintiff in question to avoid injuring the plaintiff, and by reason of such negligence, if any, appellee was injured, that she might recover." The fifteenth instruction given on behalf of appellee contained substantially the same language above quoted. It is contended by appellant that no count of the declaration charged such a degree of care or act of negligence on the part of appellant, and that both of these instructions were erroneous for that reason; that these instructions eliminated all possibility of the exercise of judgment by the driver of the automobile, and gave him no opportunity to choose between two or more mutually inconsistent precautions, even though an ordinarily prudent person would, under the same circumstances, necessarily have used the one precaution rather than the other.

Section 40 of the Motor Vehicle Act provides that upon approaching a person walking ~~xx~~ upon or along a public highway, the operator of a motor vehicle shall give reasonable warning of his approach, and use every reasonable precaution to avoid injuring such person, and if necessary stop his motor vehicle until he can safely proceed. The first count of the declaration in substance alleged that it was the duty of the appellant to drive, manage, operate, control, and direct said automobile so as not to injure appellee; yet appellant not regarding his duty in that behalf, then and there so negligently,

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carelessly, recklessly, and improperly drove, managed, operated, controlled, and directed said automobile that by reason of the improper conduct, negligence, carelessness, and recklessness of appellant as aforesaid, the said automobile then and there ran upon and struck appellee with great force and violence and greatly injured her. This general allegation of negligence was a sufficient allegation of negligence, and it was not necessary to specifically set out in that count the Motor Vehicle Statute and its provisions in order to entitle appellee to offer proof of a violation of that statute. *Wagner v. Chicago, Rock Island & Pacific Ry. Co.*, 277 Ill. 114; *Lasley v. Crawford*, 228 Ill. App. 590; *Illinois Central Railroad Co. v. Aland*, 192 Ill. 37; *Chicago & Alton Railroad Co. v. Redmond*, 70 Ill. App. 119. Where an instruction is in the language of the statute upon which it is based it is sufficient. *Greene v. Fish Furniture Co.*, 272 Ill. 148; *Mertens v. Southern Coal Co.* 235 Ill. 540; *Danley v. Hibbard*, 222 Ill. 88; *Kellyville Coal Co. v. Strine*, 217 Ill. 516. Under the statute it was the duty of appellant upon approaching appellee as she was crossing Holton street to use every reasonable precaution to avoid injuring her, and if in order to avoid injuring her the appellant, in the exercise of reasonable precaution, should have stopped his automobile it was his duty, under the statute, to do so. The duty of appellant commenced from the time he approached appellee walking upon the highway, and his duty related to the management and driving of his automobile as he approached her. The legislature saw fit to pass a statute applicable to such facts. The instruction was in the language of the statute. If there was any error it was in the statute and not in the instruction. The instruction was proper under the statute and the allegation of the first count of the declaration, and for that reason there was no error in giving it.

The sixteenth instruction concluded by telling the jury that they might assess such damages as they found, from a preponderance of the evidence, would compensate appellee for any damages she had sustained. It is insisted by appellant that medical and hospital

carelessly, recklessly, and improperly driven, managed, operated, controlled, and directed said automobile last by reason of the improper conduct, negligence, carelessness, and recklessness of appellant as aforesaid, the said automobile then and there ran upon and struck appellee with great force and violence and grievously injured her. This general allegation of negligence was a sufficient allegation of negligence, and it was not necessary to specifically set out in that count the Motor Vehicle Statute and its provisions in order to entitle appellee to offer proof of a violation of that statute.

Wagner v. Chicago, Rock Island & Pacific Ry. Co., 237 Ill. 112; *Basley v. Crawford*, 238 Ill. App. 230; *Illinois Central Railroad Co. v. Alford*, 122 Ill. 27; *Chicago & Alton Railroad Co. v. Peterson*, 70 Ill. App. 119. Where an instruction is in the language of the statute upon which it is based it is sufficient. *Greene v. Elkhorn Lumber Co.*, 232 Ill. 128; *Hartman v. Southern Coal Co.*, 232 Ill. 128; *Smith v. Alford*, 232 Ill. 128; *Chillicothe Coal Co. v. Loring*, 217 Ill. 216. Under the statute it was the duty of appellant upon approaching appellee as she was crossing Holton street to use every reasonable precaution to avoid injuring her, and if in order to avoid injuring her the appellant, in the exercise of reasonable precaution, should have stopped his automobile it was his duty, under the statute, to do so. The duty of appellant terminated from the time he stopped of appellee walking upon the highway, and his duty related to the manner and driving of his automobile as he approached her. The legislature saw fit to pass a statute applicable to such facts. The instruction was in the language of the statute. If there was any error it was in the statute and not in the instruction. The instruction was proper under the statute and the allegation of the first count of the declaration, and for that reason there was no error in giving it.

The sixteenth instruction submitted by calling the jury that they might assess such damages as they found, from a consideration of the evidence, would compensate appellee for any damages she had sustained. It is insisted by appellant that medical and hospital

expenses, and loss of earning power during minority, were not proper elements of damages; that the jury knew appellee was in the hospital for several weeks and was attended by two physicians; that the jury would think her damages might include the cost of medical and hospital services, and therefore this instruction was misleading and erroneous. There was no evidence as to hospital or medical expenses, or as to her earning power during minority. The instruction is that she may recover such damages as a preponderance of the evidence shows will compensate appellee. If there was no evidence as to medical and hospital expenses it will not be presumed that the jury included such items in their verdict.

The fifteenth instruction, among other things, stated that if the jury believe from the preponderance of the evidence that appellant failed and neglected to sound a horn, or give reasonable warning of the approach of said automobile, and by reason of such negligence, if any, the car struck appellee, the verdict should be for appellee. The instruction is not quite accurate. It directs a verdict and should have recited all of the material facts. It should have told the jury that if they believed from the preponderance of the evidence that appellant, in the exercise of due care, should have sounded a horn, or given reasonable warning, and negligently failed to do so, and that such failure constituted negligence, and appellee as the result thereof, was injured, that the verdict should be for appellee. We do not feel justified, however, in reversing the judgment solely on account of this error.

The only evidence as to the age of Angela McKay was by her mother, who testified that at the time of the accident she was five years, seven months and ten days old; that she was born September 19, 1917. The child was under seven years of age and she was therefore incapable of conduct constituting contributory negligence. McDonald v. City of Spring Valley, 285 Ill. 52; Richardson v. Nelson, 221 Ill. 254; Seley v. Eckhardt, 233 Ill. App. 584. It was not necessary for the instructions to state that appellee must be in the

exhaustive, and loss of memory during minority, was not proper
 elements of damages; that the jury was apprised as to the benefits
 for several weeks and was surrounded by the regulations; that the jury
 would think that the hospital might furnish the cost of medical and hospital
 services, and therefore this instruction was not misleading and
 erroneous. There was no evidence as to receipt of medical attention,
 or as to her learning to read during minority. The instruction is that
 she may recover such damages as a representation of the witnesses
 will corroborate applies. If there was no evidence as to medical
 and hospital expenses it will not be presumed that the jury intended
 such items in their verdict.

The fifteenth instruction, among other things, stated that if
 the jury believe from the preponderance of the evidence that the
 defendant failed and neglected to furnish a home, or give reasonable warn-
 ing of the approach of said storm, and by reason of such negli-
 gence, in any, the carrier's negligence, the verdict should be for
 appellee. The instruction is not quite accurate. It should be
 verdict and should have recited all of the material facts. It
 should have told the jury that if they believed from the preponder-
 ance of the evidence that appellee, in the winter of 1900, and
 should have furnished a home, or given reasonable warning, and negli-
 gently failed to do so, and that such failure constituted negligence,
 and appellee as the result thereof, was injured, that the verdict
 should be for appellee. We do not feel justified, however, in re-
 versing the judgment solely on account of these errors.

The only evidence as to the age of the child was by her
 mother, who testified that at the time of the accident she was five
 years, seven months and ten days old; that she was born January
 12, 1901. The child was under seven years of age and the law
 this language of constant constitutional contrivance. The
 defendant's city of Chicago, Ill. 1901; 1902; 1903; 1904; 1905; 1906;
 Ill. 1907; 1908; 1909; 1910; 1911; 1912; 1913; 1914; 1915; 1916;
 as to the instructions to state that appellee was in the

exercise of due care. The question of her contributory negligence was not in the case and reference to it was properly omitted from the instructions. The third, fourth and fifth instructions on behalf of appellant were on the question of contributory negligence by appellee and were properly refused.

Appellant's

~~Appellant's~~ second refused instruction told the jury that if they believed that appellant did certain things in the operation of his automobile the jury should find that he was using ordinary care and they should find the defendant not guilty. The acts specified were that the automobile was being driven at a reasonable rate of speed; that the horn was sounded a reasonable length of time and within a reasonable distance of the place of the accident to give warning of the approach of appellant; that appellant gave reasonable warning of the approach of his automobile; that he operated his automobile with ordinary care under the circumstances; that he kept proper watch and lookout for appellee. Appellant insists that this instruction details every specific act which the declaration charged as negligence; that it was a correct application of the pleadings to the evidence; that it was the converse of appellee's sixteenth given instruction.

The instruction limited the negligence to certain specific facts. Under the first count of the declaration appellee was entitled to prove any omission of duty. For this reason the instruction was not as broad as the declaration and it was properly refused. The subject matter of this instruction was covered in part at least by the eighteenth and nineteenth given on behalf of appellant, and its refusal, even if it was ~~not~~ correct, was not sufficient to reverse the judgment.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

exclusion of one party. The inclusion of her contradictory testimony was not in the case and reference to it was properly omitted from the instruction. The third, fourth and fifth instructions on behalf of appellant were on the question of contributory negligence by appellant and were properly refused.

Appellant's testimony being correct instruction told the jury that if they believed that appellant did commit fault in the operation of his automobile the jury should find that he was liable accordingly and that, should find the defendant not guilty. The same applied to the fact that the automobile was being driven at a reasonable rate of speed; that the hour was a reasonable length of time and within a reasonable distance of the place of the accident to give warning of the approach of appellant; that appellant gave reasonable automobile with ordinary care under the circumstances; that he kept proper watch and control for appellant. Appellant insisted that the instruction detail every specific act which the decision charged as negligence; that it was a correct specification of the plaintiff's evidence; that it was the essence of appellant's testimony given in the instruction.

The instruction limited the negligence to certain specific facts. That the first count of the declaration applied was entitled to prove any omission of duty. For this reason the instruction was not as broad as the declaration and it was properly refused. The correct matter of this instruction was covered in part at least by the eighth and ninth instructions on behalf of appellant, and if the refusal, even if it was not correct, was not sufficient to reverse the judgment.

There is no reversible error and the judgment will be affirmed.

It is so ordered.

STATE OF ILLINOIS, {
SECOND DISTRICT. ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 7th day of
Mar, in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

576

abstract only

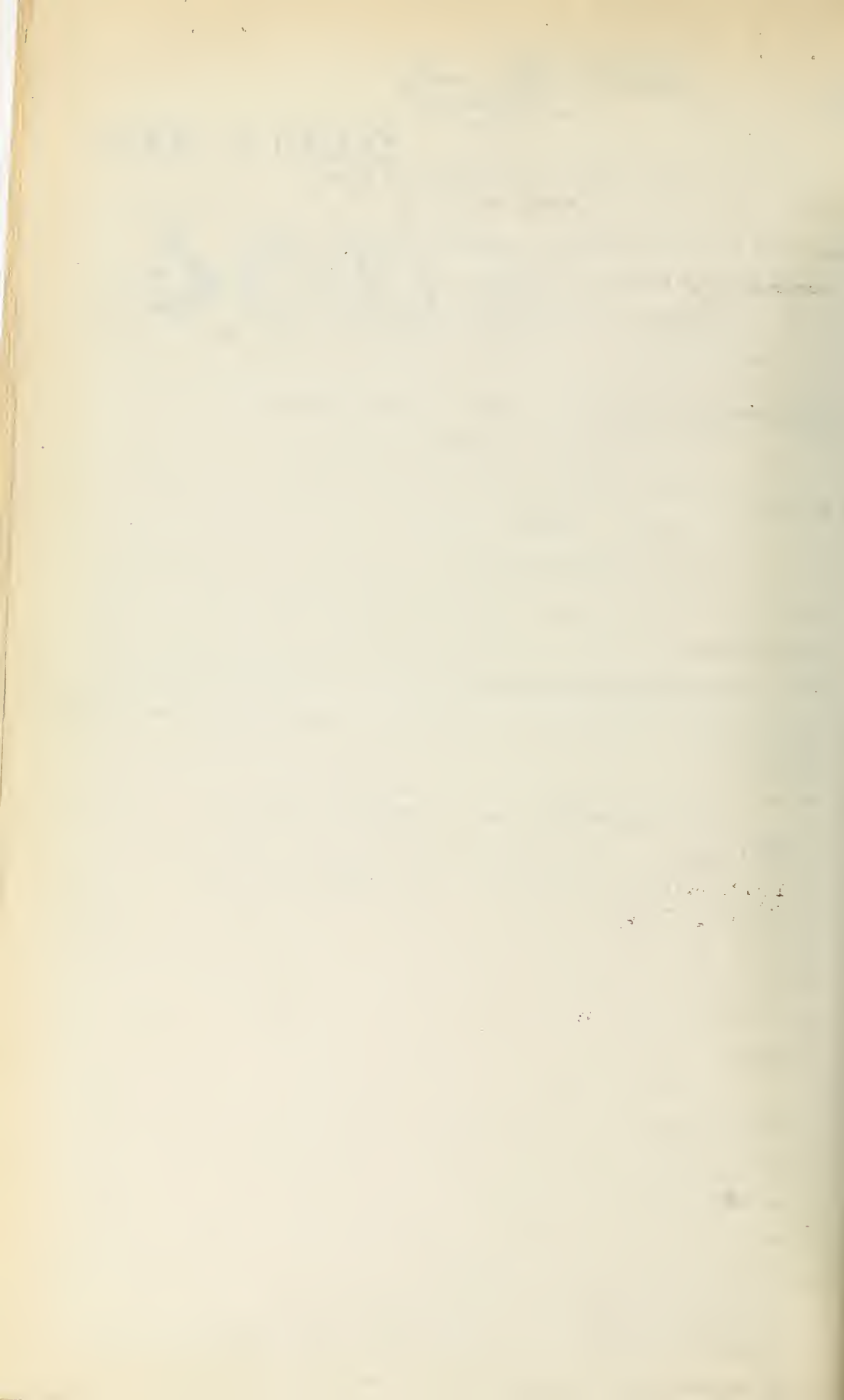
240 I.A. 679

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

Present--The Hon. NORMAN L. JONES, Presiding Justice.
Hon. AUGUSTUS A. PARTLOW, Justice.
Hon. THOMAS M. JETT, Justice.
JUSTUS L. JOHNSON, Clerk.
E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
JAN 19 1926 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:



Warren Corning & Co.,
a corporation,
Appellee,

vs

Joliet Textile Mills,
a corporation,
Appellant.

240 I.A. 679

Appeal from the Circuit Court
of Will County.

Partlow, J.

Appellee, Warren Corning & Co., a corporation, filed its bill in the circuit court of Will County against appellant, Joliet Textile Mills Company, a corporation, and the Joliet National Bank, for an accounting, the cancellation of a contract and chattel mortgage, and for an injunction. The bill was dismissed as to the Joliet National Bank. Appellant filed an answer denying that appellee was entitled to the relief prayed. It also filed a cross-bill claiming damages for the breach of the contract which was sought to be cancelled by the original bill. There was a hearing before the chancellor in open court, a decree was entered refusing damages under the original bill and the cross-bill, the cross-bill was dismissed, the principal prayer of the original bill was granted, and the cause was referred to a master to take an account upon certain transactions under the contract. From this decree an appeal has been prosecuted to this court.

Appellant owned a mill at Joliet for the conversion of waste. Appellee was engaged in selling waste to various railroad companies, and wanted to manufacture the product sold to its customers. On August 1, 1922, a written contract was entered into between the parties which was to continue for five years. Appellee agreed to furnish appellant raw material suitable for conversion into a finished product of waste, and appellant, in its mill, was to convert the raw material so furnished into waste and give appellee the exclusive sale of all material so converted. Appellee was to

240 I.A. 679

Filed from the Circuit Court
of Will County.

Warren Corning & Co.,
a corporation,
Appellee,

vs

Joliet Textile Mills,
a corporation,
Appellant.

Perf. 7.

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2.

furnish material in such quantities as would keep the mill working at full capacity which was estimated at 15000 pounds of raw material per day. The contract provided that while it was not intended that appellee should be held rigidly to supply 15000 pounds per day, but the amount furnished should not be substantially less than that amount. Appellee was to pay a conversion charge of \$1.75 per 100 pounds on the material converted, which charge was based on an allowance of 50¢ per 100 pounds for the actual conversion process, and \$1.25 per 100 pounds for overhead expenses necessary to the conversion. It was agreed that there should always be a net profit in the conversion charge of one-half cent per pound, but in the event it became possible for appellant to reduce the operating expense below \$1.25 per 100 pounds, the benefit of such reduction should be divided equally between the parties. The conversion charge was to become due on each 100 pounds when it was packed, baled, marked, and ready for shipment, and was to be payable on the 16th day of the succeeding month. At the end of each fiscal year the value of what was found to be the average amount of raw material held each day at the mill was to be determined and appellant agreed to pay six per cent per annum on the average value so determined. The minimum amount of raw material to be furnished was not to be strictly adhered to during periods of strikes, labor troubles, business depressions, or in case of decreased sales of the finished product resulting from causes beyond the control of appellee.

The evidence shows that after this contract was executed the parties entered upon its performance and continued until January 22, 1923, when a supplemental contract was entered into which was to be effective from January 22, 1923, until February 3, 1923. This supplemental contract relieved appellee from the obligation, under the original contract, of furnishing a minimum of 15000 pounds per day and of paying a conversion charge of \$1.75 per 100 pounds. In lieu thereof it was agreed that appellee was, during the time

furnish material in such quantities as would meet the full working at full capacity which was estimated at 1,000 pounds of raw material per day. The contract provided that if the raw material was not supplied in full capacity, the price should be reduced proportionately. The amount furnished should not be substantially less than the amount required for the conversion of 11.75 per 100 pounds of the material converted, which charge was based on an allowance of 80¢ per 100 pounds for the actual conversion process, and 1.25 per 100 pounds for overhead expenses necessary to the conversion. It was agreed that there should always be a net profit in the conversion charge of one-half cent per pound, but in the event it became necessary for appellant to reduce the operating expense below 11.25 per 100 pounds, the benefit of such reduction should be divided equally between the parties. The conversion charge was to be paid by appellant 100 pounds when it was ordered, billed, packed, and ready for shipment, and was to be payable on the 15th day of the succeeding month. At the end of each fiscal year the value of what was found to be the average amount of raw material held each day of the year was to be determined and appellant agreed to pay six per cent per annum on the average value so determined. The minimum amount of raw material to be furnished was not to be strictly adhered to during periods of strikes, labor troubles, business depressions, or in cases of extraordinary sales of the finished product resulting from causes beyond the control of appellant.

The evidence shows that after this contract was executed the parties entered upon its performance and continued until January 22, 1932, when a supplemental contract was entered into which was to be effective from January 22, 1932, until February 2, 1933. This supplemental contract related supplies from the defendant, under the original contract, as furnished a quantity of 15,000 pounds per day and of paying a conversion charge of 11.75 per 100 pounds. In lieu thereof it was agreed that appellee was, in the time

3.

specified in the supplemental agreement, to operate the mill and pay all expenses incident thereto. Appellee was to pay appellant at the termination of the supplemental contract, one-half of the net proceeds realized on the sale of all material manufactured. Appellant was to remain in possession of the mill and the goods of appellee therein contained. If a chattel mortgage on certain stock then held in the mill was released the stock was to be shipped as directed by appellee. The covenants of the original contract were to remain in effect so far as they did not conflict with the supplemental contract, and on the termination of the supplemental contract all of the provisions of the original contract were to be given full force and effect during the time provided therein.

On December 15, 1922, appellee borrowed \$10000.00 from the Joliet National Bank and gave its promissory note therefor, payable in ninety days, secured by a chattel mortgage on the raw material owned by appellee in the mill, and appellant was made the trustee under this chattel mortgage. This is the chattel mortgage referred to in the supplemental contract. This chattel mortgage provided that appellee might sell or dispose of any portion of the stock mortgaged upon payment to the trustee of a sum equal to the market value of such goods, or upon depositing with the trustee goods of equal value with those to be disposed of, upon the written consent of the trustee executed by its president. All goods which appellee might thereafter so deposit with the trustee were to be covered by the mortgage. On January 13, 1923, appellee paid the trustee \$2200.00 for stock withdrawn which amount was retained by the trustee, and was never applied on the mortgage but was later returned to appellee. On January 27, 1923, appellee tendered to the Joliet National Bank \$7800.00, the balance then due on its note and mortgage, and demanded that the note be cancelled and the chattel mortgage released. The bank refused to cancel the note and refused to release the mortgage on the ground that \$7800.00 was not the balance due thereon. On January 29, 1923,

specified in the supplemental agreement, to exercise the right and the
all expenses incident thereto. Appellee was to pay principal of the
termination of the supplemental contract, or half of the net proceeds
realized on the sale of all material manufactured. Appellee was to
remain in possession of the mill and the tools of appellee therein
contained. If a chattel mortgage on certain stock then held in
the mill was released the stock was to be shipped as directed by
appellee. The covenants of the original contract were to remain in
effect as far as they did not conflict with the supplemental contract,
and on the termination of the supplemental contract all of the pro-
visions of the original contract were to be given full force and
effect during the time provided therein.

On December 18, 1922, appellee borrowed \$1000.00 from the
Holist National Bank and gave its promissory note therefor, payable
in ninety days, secured by a chattel mortgage on the raw material
owned by appellee in the mill, and appellee was made the trustee
under this chattel mortgage. This is the chattel mortgage referred
to in the supplemental contract. This chattel mortgage provided that
appellee might sell or dispose of any portion of the above material
upon payment to the trustee of a sum equal to the market value of
such goods, or upon depositing with the trustee two or equal value
with those to be disposed of, upon the written consent of the trustee
executed by his president. All proceeds which appellee might receive
as proceeds from the trustee were to be covered by the mortgage. On
January 12, 1923, appellee paid the trustee \$2500.00 for which with-
drawn which amount was retained by the trustee, and was never credited
on the mortgage and was later returned to appellee. On January 27,
1923, appellee tendered to the Holist National Bank \$700.00, the
balance then due on its note and mortgage, and demanded that the note
be cancelled and the chattel mortgage released. The bank refused to
cancel the note and refused to release the mortgage on the ground
that \$700.00 was not the balance due thereon. On January 29, 1923,

3.

appellee paid the Joliet National Bank \$9900.00 in full of the note, notwithstanding said payment of \$2200.00 had been previously made. The bank cancelled the note and delivered it to appellee, and thereupon the trustee delivered to appellee his check for \$2200.00, upon which check payment later was stopped by the trustee, but the check was finally paid on February 2, 1923, after the bill was filed in this case. Appellant did not release the chattel mortgage until after the bill was filed.

On January 29, 1923, after the note and chattel mortgage had been paid, Corning the president of appellee went to the mill and gave a written order to ship out all finished product on hand, and the agents and servants of appellant agreed to comply with the order but the shipment was not made because it was countermanded by Walsh, the president of appellant. Corning testified that at the same time he also ordered a small portion of unfinished stock shipped so he could raise money to meet some bills. The evidence on behalf of appellant on this point is that Corning at that time ordered all material shipped whether finished or unfinished; that he said appellee would be unable to carry out, and would not attempt to further carry out, the contract; that there was some talk of a settlement and cancellation of the contract; that Walsh offered to settle and cancel the contract for \$5000; that it was agreed that no goods would be shipped until such a settlement was made and Corning agreed to be in Joliet on February 1, 1923, for the purpose of giving the final word on the settlement. The evidence on behalf of appellee is that Walsh said that not a thing would be shipped unless \$5000 was paid; that Corning said he was going to get out of the contract because no shipments were to be made unless \$5000 was paid. It is admitted by Corning that there was some talk of the cancellation of the contract and a settlement on the basis of \$5000. The contention of appellee is that upon its offer on January 27, 1923, to pay the balance due on the note and mortgage, and the refusal of the bank to accept the

appellant paid the Joliet National Bank \$200.00 in full of the note, notwithstanding said payment of \$200.00 had been previously made. The bank cancelled the note and delivered it to appellant, and thereupon the trustee delivered to appellant his check for \$200.00, upon which check payment later was stopped by the trustee, but the check was finally paid on February 1, 1918, after the bill was filed in this case. Appellant did not release the Joliet National Bank until after the bill was filed.

On January 29, 1918, after the note and check had been paid, appellant the president of appellant went to the bill and gave a written order to appellant to deliver the bill to him, and the agents and servants of appellant agreed to comply with the order but the shipment was not made because it was countermanded by Walsh, the president of appellant. Appellant testified that at the same time he also ordered a small portion of unfinished stock shipped so he could raise money to meet some bills. The evidence on behalf of appellant on this point is that appellant at that time ordered all material shipped together finished or unfinished; that the said material would be unable to carry out, and would not attempt to further carry out, the contract; that there was some talk of a settlement and cancellation of the contract; that appellant offered to settle and cancel the contract for \$5000; that it was agreed that no goods would be shipped until such a settlement was made; that appellant agreed to be in Joliet on February 1, 1918, for the purpose of making the final word on the settlement. The evidence on behalf of appellant is that Walsh said that not a thing would be shipped unless \$5000 was paid; that appellant said he was going to get out of the contract because no shipments were to be made unless \$5000 was paid. It is admitted by appellant that there was some talk of the cancellation of the contract and a settlement on the basis of \$5000. The contention of appellant is that prior to offer on January 27, 1918, to pay the balance due on the note and mortgage, and the refusal of the bank to accept the

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same, that appellee had a right to sell and ship all or any part of the stock whether finished or unfinished; that the refusal of appellant to accept payment, cancel the note, release the mortgage and permit shipment constituted such a breach of the contract as gave appellee the right to rescind the contract; that appellee did rescind the contract, and on February 1, 1923, filed its bill in this case.

The decree found that the original contract, the supplemental contract, and the chattel mortgage had been executed; that there was no misrepresentation on the part of appellant in regard to the capacity of its plant; that the plant had a capacity of about 15000 pounds per day if proper material was furnished; that appellee failed to furnish the orders, quality and quantity of materials required to keep the mill in operation; that on January 27, 1923, appellee offered to pay the mortgagee the full amount remaining due on the chattel mortgage; that upon such offer being made, appellee had the full right and power to sell and ship any part, or all, of the material then held at the mill, and that the refusal by appellant to allow the shipment constituted a breach of both the supplemental and original contract; that on January 29, 1923, appellee repudiated its obligations under both contracts and that such repudiation was justified because of the breach of said contracts by appellant on January 27, 1923, and its refusal to ship or permit appellee to ship the finished product as directed. The decree cancelled the contracts, and the temporary injunction granted upon the filing of the original bill was made permanent. No damages were allowed either party for breach of either contract under the original bill or cross-bill. The cause was referred to a master for an accounting of the transactions between the parties from October 9, 1922, to January 27, 1923. The cross-bill was dismissed.

It is stated by appellant that "under the facts as presented by the evidence, and by the decree of the court, the only question which is seriously raised by this case is whether the defendant is to be deprived of its right to recover because of its

... that appellee had a right to sell and ship all or any part of
the stock either finished or unfinished; that the contract of sale
to accept payment, cancel the note, release the mortgage and permit
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contract, and on February 1, 1923, filed its bill in this case.
The decree found that the original contract, the appellee-
rental contract, and the chattel mortgage had been executed; that
there was no misrepresentation on the part of appellant in regard
to the capacity of its plant; that the plant had a capacity of about
15000 pounds per day; that the material was furnished; that appellee
failed to furnish the orders, quality and quantity of materials
required to keep the mill in operation; that on January 27, 1923,
appellee offered to pay the mortgage tax bill; that the plaintiff
on the chattel mortgage; that upon such offer being made, appellee
had the right and power to sell and ship any part, or all, of
the material then held by the mill, and that the refusal of appellant
to allow the appellant constituted a breach of both the contractual
and original contract; that on January 28, 1923, appellee replevied
the material in order both contracts and that such replevin was
justified because of the breach of said contracts by appellant on
January 27, 1923, and the refusal to ship or reship appellee to ship
the finished product as directed. The decree awarded the contracts,
and the temporary injunction granted upon the filing of the bill
will was permanent. No damages were allowed either party for
breach of either contract under the original bill or cross-bill.
The cause was returned to a master for an accounting of the trans-
actions between the parties from October 1, 1921, to January
27, 1923. The cross-bill was dismissed.
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sented by the evidence, and by the decree of the court, the only
question which is seriously raised by this case is whether the
defendant is to be deprived of its right to recover because of its

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alleged default on January 27, 1923."

There is very little dispute as to the law applicable to the facts here presented. It is practically agreed that equity had jurisdiction; that when equity assumes jurisdiction for one purpose it assumes jurisdiction for all purposes; that equity has jurisdiction to assess damages if the evidence justifies such assessment; that both the original bill and the cross-bill asked for damages, therefore neither party is in a position to dispute such jurisdiction as to damages. It is claimed by appellee that no damages should be assessed in favor of appellant for the reason that there were breaches of the contract by appellant, and that under the evidence any damages assessed would be speculative, and are not susceptible of proof.

The violation of a contract can only be made the basis for a rescission where such violation constitutes a material breach for which there can be no adequate compensation by the payment of damages, and which renders that portion of the contract still to be performed a thing different from what the parties originally contracted.

Pittenger vs. Pittenger, 208 Ill. 582; Palmer vs. Meriden Co., 188 Ill. 508; Selby vs. Hutchinson, 4 Gil. 319; 3 Elliott on Contracts, 229. Where one of the parties repudiates a contract, the injured party has an election to treat the contract as rescinded, and recover upon the quantum meruit so far as he has performed; or he may keep the contract alive for the benefit of both parties, he being at all times ready and able to perform, and at the end of the time specified he may sue and recover under the contract; or he may treat the repudiation as a termination of the contract for all purposes and sue for the profits he would have realized if he had not been prevented from performing it. Chicago Washed Coal Co. vs. Whitsett, et al, 278 Ill. 623; Lake Shore & Michigan Southern Railway Co. vs. Richards, 152 Ill. 59; City of Elgin vs. Joslyn, 136 Ill. 525.

A waiver of rights under a contract must be either intentional, or based upon such facts and conduct as warrants an inference of the

alleged details on January 17, 1923.

There is very little dispute as to the law applicable to the facts here presented. It is practically agreed that equity has jurisdiction; that when equity assumes jurisdiction for one purpose it assumes jurisdiction for all purposes; that equity has jurisdiction to assess damages if the evidence justifies such assessment; that both the original bill and the cross-bill asked for damages, therefore neither party is in a position to dispute such jurisdiction as to damages. It is claimed by appellee that no damages should be assessed in favor of appellant for the reason that there were breaches of the contract by appellant, and that under the evidence any damages assessed would be speculative, and are not susceptible of proof.

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relinquishment of the rights. The acts upon which it is sought to base a waiver must be clear, unequivocal, and decisive, Willis Coal & Mining Co. vs. Missouri & Illinois Coal Co., 206 Ill. App. 192; 27 R. C. L. 909. The continuance of a contract in force after various breaches does not constitute a waiver of past breaches where the alleged waivers are conditioned upon future fulfillment of the contract. Glenridge Coal Co. vs. Marion County Coal Co., 205 Ill. App. 264. Where both parties have been guilty of a failure to perform strictly, they mutually waive the right to complain of non-performance until one party has put his adversary in a position where he may have such right of action by a failure or refusal to perform. Chicago Washed Coal Co. vs. Whitsett, 278 Ill. 623; Lehman vs. Webster & Co., 209 Ill. 264; Pennsylvania Coal Co. vs. Ryan, 107 Ill. 226; Consolidated Electric Sign Co. vs. Price, 192 Ill. App. 510.

It appears from the evidence that both the original contract and the supplemental contract were carried out only in part after considerable difficulty. At the time the original contract was executed appellant was financially embarrassed. It was indebted in the sum of about \$100,000. The only property which it apparently owned was its mill and machinery and about \$10,000 worth of material which was in the mill at the time the original contract was entered into, which stock was purchased by appellee, paid for in cash, and shipped out of the mill. Before appellant could operate under the contract it was necessary for it to make some kind of a settlement with its creditors. A composition was finally effected which provided for certain payments to be made by appellant on its old debts at regularly stated intervals. While the mill was being operated some of these payments became due. Appellant did not have the money to pay them and at the same time meet the pay-rolls. As a result several requests were made of appellee for advancements of money, which requests were apparently honored by appellee. The evidence also shows that the machinery in the mill was not in condition for operation at the time the contract was entered into. The contract did not specify any

reimbursement of the rights. The acts upon which it is sought to base a waiver must be clear, unequivocal, and decisive, *Wills Coal & Mining Co. vs. Missouri & Illinois Coal Co.*, 205 Ill. App. 122; 27 E. 2d 1007. The continuance of a contract in force after various breaches does not constitute a waiver of past breaches where the alleged waivers are conditioned upon future fulfillment of the contract. *Glennville Coal Co. vs. Marion County Coal Co.*, 205 Ill. App. 284. Where both parties have been guilty of a failure to perform strictly, they mutually waive the right to complain of non-performance until one party has put his adversary in a position where he may have much right of action by a failure or refusal to perform. *Chicago Washed Coal Co. vs. Whitsett*, 278 Ill. 623; *Lehman vs. Webster & Co.*, 209 Ill. 284; *Pennsylvania Coal Co. vs. Ryan*, 107 Ill. 286; *Consolidated Electric Sign Co. vs. Price*, 192 Ill. App. 210.

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certain time at which operations should begin. It appears that it would take at least ten days or two weeks to put the machinery in repair. There is considerable dispute as to just how much time was taken in getting the factory ready for operation. One of the witnesses who testified for appellant stated that he was in the factory on October 4, 1922, and that one of the machines was torn down and the parts distributed around the floor. The evidence shows that the first material was received about the middle of October and operations begun about October 17. There is evidence tending to show that the repairs made did not put the machinery in first class condition and that there were defects which interfered with first class work. One shipment of waste was rejected by the consignee because it was not properly manufactured, and this shipment was sent to another factory to be again sent through the machines. There is some evidence that there were delays on account of repairs to machinery, and on account of fires which originated from the operation of the machines. The decree makes no finding as to any default on behalf of appellant in carrying out its part of the contract.

On the other hand, the decree finds that appellee was in default for the reason that it did not furnish materials and orders sufficient to keep the plant in operation to the extent of 15,000 pounds per day. The evidence shows that when an invoice was taken on January 7, 1923, there were 350,000 pounds of material in the factory belonging to appellee. At the time the chattel mortgage was executed in December, 1922, there was material in the factory of the value of about \$27,000.00 belonging to appellee. There is testimony that during the time the contract was in operation appellee spent over \$70,000 in fulfilling its part of the contract. It is claimed, however, that notwithstanding this evidence, the material furnished was of an inferior grade and that it was not well balanced, that certain necessary materials which went into the finished product were not furnished, and the chancellor found this to be true. The evidence shows that there were a few days during the time the contract was in

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that during the time the contract was in operation the value went
value of about \$27,000.00 belonging to appellee. There is testimony
executed in December, 1932, there was material in the factory of the
factory belonging to appellee. At the time the official witness was
on January 7, 1933, there were 250,000 pounds of material in the
pounds per day. The evidence shows that when an invoice was taken
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would take at least ten days or two weeks to get the machinery in
certain time at which operations should begin. It appears that it

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force when the mill was operated substantially to the extent provided in the contract, but during most of the time it was not operated to the extent of one-half of the amount provided in the contract. It also appears that during the time the contract was in force there were constant complaints by appellee that the overhead cost of production was so high that appellee could not sell its product on the market at a profit, and this was one of the reasons why the supplemental contract was entered into by the terms of which appellee assumed the operation of the plant at its own expense.

Appellant insists that the evidence does not support the finding in the decree that appellant made such a default on January 27, 1923, as justified appellee in rescinding the contract. In support of this contention it is insisted that the \$2200 was not a payment on the chattel mortgage; that it was only received by the trustee as security for goods of that value which were shipped out; that under the terms of the mortgage the total amount secured thereby was to be paid to the mortgagee; that the trustee had no right to receive any payments, therefore appellee did not comply with the term of the mortgage when it tendered only \$7800 to the bank, was not entitled to have the note cancelled or the mortgage released, or to rescind the contract.

We think the evidence shows that this contention was an afterthought on the part of appellant and that there was another reason why the payment was not applied on the mortgage. Corning testified that when the \$2200 payment was made Walsh told him it would be applied on the mortgage. This is denied by Walsh, but it is apparent that this was the understanding of Corning for the reason that he only tendered to the mortgagee \$7800 which would have been the balance due if the \$2200 had been credited on the note. When the mortgagee refused to receive this amount Corning immediately tendered the full amount in addition to the \$2200. It appears from the evidence that Walsh did not want the chattel mortgage paid off at this time, and we think this is the real reason he did not apply the \$2200 on the

force when the bill was passed substantially in the manner provided
in the contract, but during part of the time it was not required to
the extent of one-half of the amount provided in the contract. It
also appears that during the time the contract was in force there were
constant complaints by appellee that the contract was not in
and no claim that appellee could not sell its product on the market
at a profit, and this was one of the reasons why the contractual
contract was entered into by the terms of which appellee was bound
the operation of the plant at its own expense.
Appellee insists that the evidence does not support the
finding in the above that appellee made such a claim in January
27, 1933, as testified appellee in its answer to the contract. In
support of this contention it is insisted that the above was one
of the stated reasons; that it was only because of the
business as usually in the hands of that value which was allowed to
last under the terms of the contract and that it was not intended
was to be sold to the mortgage; that the trustee was to hold it
receive any payments, therefore appellee did not comply with the terms
of the mortgage when it transferred this \$2500 to the bank, and was
entitled to have the note cancelled or the mortgage released, or to
rescind the contract.
We think the evidence shows that this contention was not
sustained on the part of appellee, but that there was another
reason why the contract was not applied in the mortgage. For this
testified that when the \$2500 payment was made to the bank it was
be applied in the mortgage. This is denied by appellee, but it is
that this was the intention of the bank, and that the bank
only intended to pay the mortgage \$2500 when it was paid to the bank
and it was \$2500 and was credited on the mortgage. When the mortgage
refused to receive this amount because it was not intended that
amount be applied to the \$2500. It appears from the evidence that
appellee did not want the stated mortgage paid out of this fund, and
we think this is the real reason for the fact that the \$2500 of the

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Mortgage rather than the reason he now urges. Walsh testified that when he learned on January 27 that Corning was going to pay off the mortgage, he (Walsh) did not want it paid off; that he tried to get in touch with Corning to urge him not to do so; that he began to get scared that Corning "was going to run out on him"; that he knew that as long as the mortgage was in effect he could hold the goods and he felt safer with the goods in the mill. We think this was the real reason the \$2200 was not credited on the mortgage. The mortgage provided that the mortgagor could sell or dispose of any of the property mortgaged upon paying to the trustee of a sum equal to the market value of such goods, or upon depositing with the trustee goods of equal value with those sold; that all goods deposited with the trustee in substitution for goods sold should be included in the mortgage. There was no provision which required the trustee to return to appellee any money paid by appellee for goods sold and shipped. Under these circumstances the \$2200 was a payment on the note and mortgage and should have been so credited. When appellee tendered to the bank \$7800 which was the balance due on the mortgage, appellee had a right to have the note cancelled and the mortgage released. Appellee was deprived of its rights in this regard by the wrongful act of the trustee. Even after the full amount was paid and accepted and the note was cancelled the trustee did not deliver a release of the mortgage to appellee until after the bill was filed in this case. Walsh denies that appellant demanded a release but the evidence shows otherwise. He also claims that there was an agreement not to ship, after the mortgage was paid, until after there was a settlement, but we do not think the evidence sustains this contention. On the contrary we think there was a positive refusal on the part of Walsh to allow appellee to ship any goods even after appellee had the right to do so.

There is a sharp conflict in the evidence as to every material question in issue. We have read all of the evidence with great care. The chancellor saw the witnesses and heard them testify.

Mortgage rather than the reason he was given. When he learned on January 27 that Cornish was going to pay off the mortgage, he (Mortgage) did not want it until it was paid in full. In touch with Cornish to urge him not to do so; that he began to get scared that Cornish "was going to run out on him"; that he then told as long as the mortgage was in effect he could hold the note and he felt safer with the note in the mill. He thinks this was the real reason the \$2500 was not credited on the mortgage. The mortgage provided that the mortgagor could sell or dispose of any of the property mortgaged upon paying to the mortgagee or a person for the market value of such goods, or upon depositing with the mortgagee goods of equal value with those sold; that all goods deposited with the trustee in substitution for goods sold would be included in the mortgage. There was no provision which required the trustee to return to mortgagee any money paid by mortgagee for the sale and shipped. Under these circumstances the \$2500 was a payment on the note and mortgage and should have been so credited. When the note was tendered to the bank \$7500 which was the balance due on the mortgage, mortgagee had a right to have the note cancelled and the mortgage released. Mortgagee was deprived of its rights in this respect by the wrongful act of the trustee. Even after the full amount was paid and accepted and the note was cancelled the trustee did not deliver a release of the mortgage to mortgagee until after the bill was filed in this case. This denies that mortgagee demanded a release and the evidence shows otherwise. He also claims that there was an agreement not to ship, after the note was paid, until after there was a settlement, but we do not find the evidence supports this contention. On the contrary we think there was a positive refusal on the part of trustee to allow mortgagee to ship any goods until after mortgagee had the right so to do.

There is a sharp conflict in the evidence as to every material question in issue. We have read all of the evidence with great care. The chancellor was the witnesses and heard the testimony.

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He was in a better position than we are to determine the weight to be given to the testimony of each witness. Much depends upon the manner in which the evidence was given and the appearance of the witnesses. We do not feel justified in setting aside the finding with reference to ~~the~~ a breach of the contract by appellant on the grounds that the finding is against the weight of the evidence. If there was a breach as found by the decree it was a substantial one. In fact it was such as to render impossible a performance of the contract by appellee and such as to give appellee the right to rescind.

If the contract was properly rescinded the next question is as to whether either party was entitled to damages. The decree found that appellee was in default in not furnishing material of proper quantity and quality. We are not disposed to say that this finding is contrary to the evidence and for that reason appellee was not entitled to damages as prayed in the original bill. On the other hand, we are of the opinion that appellant was also in default and did not comply with its contract. We have stated the principal respects in which appellant failed to comply with its contract, and it is unnecessary to here repeat them. Because of the fact that neither party complied with the contract the decree was correct in refusing damages to either party.

- A party claiming damages cannot recover unless he has performed his part of the contract, or is ready and willing to perform. Baird vs. Evans, 20 Ill. 30. Damages which are speculative, and too remote to be measured, or are impossible to ascertain, cannot be recovered. Pennsylvania Coal Co. vs. Ryan, 107 Ill. 226; Haven & White vs. Wakefield, 39 Ill. 509; Chicago, Indiana & Western Railway Co. vs. Baker, 130 Ill. App. 414. The contract provides that appellee need not strictly adhere to the amount of raw material to be furnished during periods of strikes, labor troubles, business depressions, or of decreased sales of the finished product made therefrom resulting from causes beyond the control of the appellee. There is some evidence that there were business depressions and decreased sales of the

11.

finished product which were beyond the control of appellee, and therefore this fact must be taken into consideration. There is evidence not only as to the defective quality of the stock furnished by appellee, but there is also evidence as to defective manufacture of that stock by appellant. It also appears that there were various shut-downs from time to time because of repairs that were necessary to the machinery, and that other shut-downs were caused by reason of fires in the plant which caused various delays. It also appears that the price of conversion was higher than could be paid and come in competition with other factories. While it is true the contract fixed the price between the parties, yet when we take into consideration the various defaults by both parties, neither was entitled to damages, and any damages assessed would be very difficult of ascertainment and would necessarily be largely speculative. Under this state of the proofs the decree was correct in refusing damages.

We find no reversible error and the decree will be affirmed.

Decree affirmed.

Elmwood products which were beyond the control of appellee, and therefore this fact must be taken into consideration. There is evidence not only as to the defective quality of the steel furnished by appellee, but there is also evidence as to defective workmanship of that stock by appellee. It also appears that there were various short-weights from time to time because of retaining that were necessary to the economy, and that other workmanship was common by reason of time in the plant which caused various delays. It also appears that the price of conversion was higher than could be paid and some in connection with other factors. While it is true the plaintiff fixed the price between the parties, yet when we take into consideration the various delays by both parties, neither was entitled to damages, and any damages awarded would be very difficult to determine and would not justify a large award. Under this state of the facts the decree was correct in awarding damages. The first no retrievable error and the decree will be affirmed.

Decree affirmed.

STATE OF ILLINOIS, } ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 7th day of
Mar, in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

[Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.]

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS
JANUARY 10, 1900
TO THE PRESIDENT OF THE UNIVERSITY OF CHICAGO
FROM THE DEAN OF THE FACULTY

Very respectfully,
[Signature]
Dean of the Faculty

1579

abstract only

240 I.A. 679

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

Present--The Hon. NORMAN L. JONES, Presiding Justice.

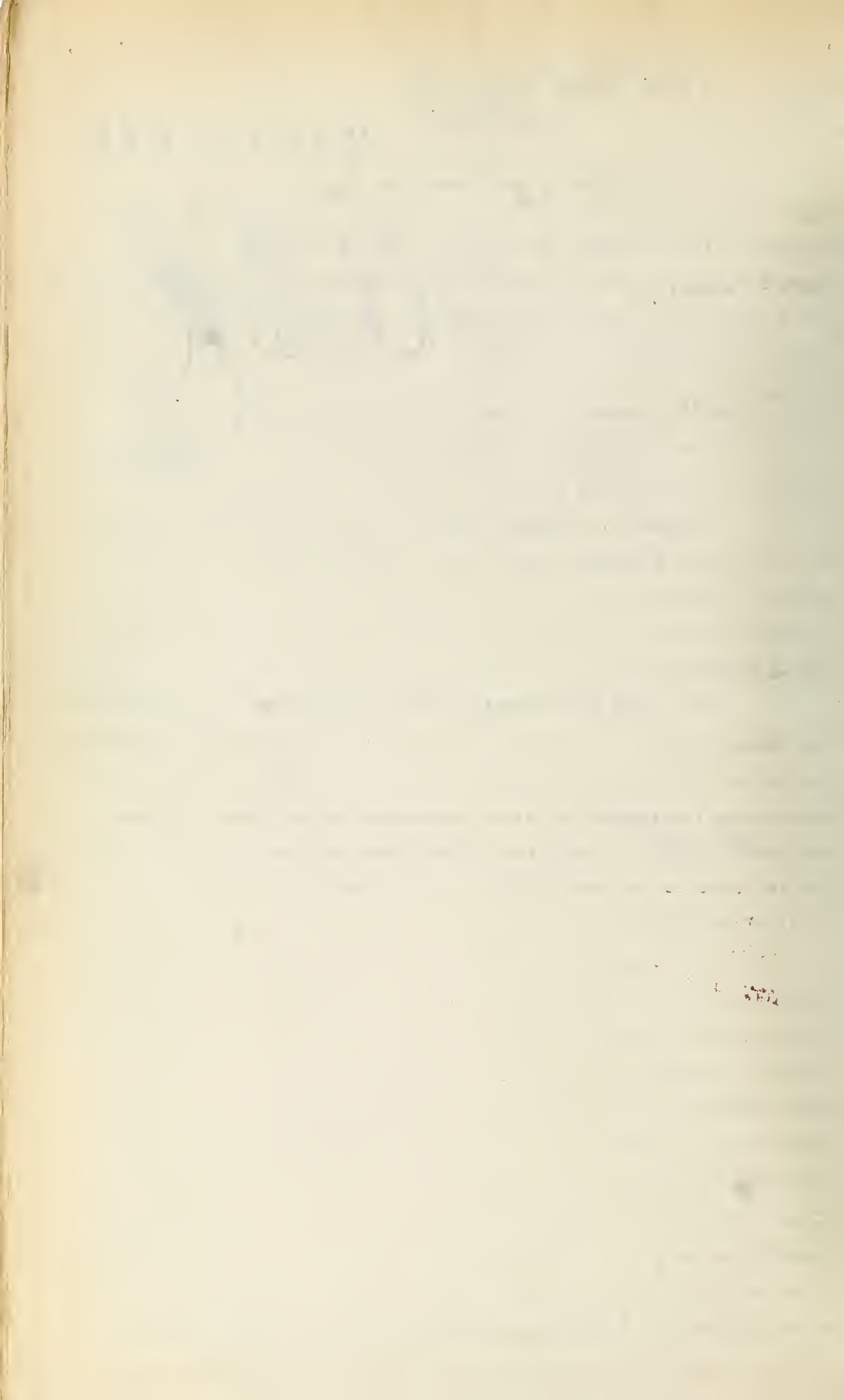
Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On
JAN 19 1926 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:



240 I.A. 679

Clyde Schooley,
Appellee,

vs.

Appeal from the Circuit
Court of Peoria County.

Wilson Provision Company,
a corporation,
Appellant.

Partlow, J.

Appellee, Clyde Schooley, recovered a judgment for \$1842.55 in the circuit court of Peoria county, against appellant, Wilson Provision Company, on account of personal injuries and injuries to a truck caused by a collision with a truck belonging to appellant, and an appeal has been prosecuted to this court.

The first error urged is that the evidence does not sustain the judgment, and that appellee was guilty of contributory negligence. The declaration consisted of three counts. The first alleged general negligence, the second charged a high and dangerous rate of speed, and the third alleged that appellee had the right of way which right was violated by appellant.

The evidence shows that the accident occurred on August 12, 1924, about ten o'clock in the morning of a clear bright day, at the intersection of Main street and Garfield avenue, in the city of Peoria. Main street extends east and west, and Garfield avenue extends north and south. There is a double street-car track in Main street and the street is forty and one-half feet wide. The distance from the south curb line to the first rail of the street car track is about twelve feet. The width of Garfield avenue is about thirty feet. Appellee at the time of the accident was thirty three years old, and was engaged in concrete work. About twenty years prior to this accident he lost a leg, and used an artificial limb. He was operating a one ton Cheverlet truck, with an enclosed cab, having a glass wind shield and glass doors which were closed. He

SALES

State School,
Appellee,

Appellant from the Circuit
Court of Peoria County.

William Provision Company,
a corporation,
Appellant.

Peoria, Ill.

Appellee, State School, recovered a judgment for \$100.00

in the circuit court of Peoria County, against appellant, William Provision Company, on account of personal injuries and injuries to a truck caused by a collision with a truck belonging to appellee, and an appeal has been prosecuted to this court.

The first error urged is that the evidence does not sustain the judgment, and that appellee was guilty of contributory negligence. The declaration consisted of three counts. The first alleged negligence, the second charged a high and dangerous rate of speed, and the third alleged that appellee had the right of way which right was violated by appellant.

The evidence shows that the accident occurred on August 12, 1932, about ten o'clock in the morning of a clear bright day, at the intersection of Main Street and Garfield Avenue, in the city of Peoria. Main Street extends east and west, and Garfield Avenue extends north and south. There is a double street-car track in Main Street and the street is forty and one-half feet wide. The distance from the south curb line to the first rail of the street car track is about twelve feet. The width of Garfield Avenue is about thirty feet. Appellee at the time of the accident was thirty-three years old, and was engaged in concrete work. About twenty years prior to this accident he lost a leg, and used an artificial limb. He was operating a one-ton Chevrolet truck, with an enclosed cab, having a glass wind shield and glass doors which were closed. He

was driving north on Garfield avenue. He testified that as he approached the intersection he practically stopped. He looked west before he reached the south sidewalk line of Main street and could see practically to the end of the block west. He then looked east. He put his car in second and started across the intersection. He was looking straight ahead as he moved into the intersection. As the front wheels of his truck reached the second street car rail his truck was hit on the west side. At the time he crossed the intersection he was traveling six or eight miles per hour. He did not see appellant's truck before the collision. The truck which struck him was a White truck loaded with meat and weighed 6900 pounds.

Three disinterested eye witnesses testified for appellee. Two of them testified that appellee was traveling eight to ten miles per hour; that he slowed down for the crossing; that appellant's truck was going thirty to forty miles per hour; that it did not slacken speed and gave no alarm or warning signal of any kind; that appellee's truck was knocked thirty or forty feet. The third witness for appellee testified that when appellee reached the intersection he was going five to ten miles per hour.

Harlon the driver of appellant's truck testified that as he approached the intersection his truck was going fifteen or eighteen miles per hour and was straddling the south car track. He looked first to the south, then to the north and then back south. When he looked south the second time he was eight feet into the intersection east of the curb. At that time appellee was on the south sidewalk line of Main street, about five to eight feet west of the east curb; that appellee's truck was going twenty four to twenty eight miles per hour; that appellant's truck turned slightly to the north and appellee turned slightly to the east, and the left front wheel of appellee's truck struck the right side of appellant's truck just back of the right front wheel, causing appellant's truck to swerve in a northwesterly direction and run into a pole at the northwest corner of the intersection.

was driving north on Garfield Avenue. He testified that as he approached the intersection he practically stopped. He looked south before he passed the south sidewalk line of Main Street and could see practically to the end of the block west. As they looked east. He put his car in second and started across the intersection. He was looking straight ahead as he moved into the intersection. As the front wheels of his truck reached the second street car rail his truck was hit on the west side. At the time he crossed the intersection he was traveling six or eight miles per hour. He did not see appellant's truck before the collision. The truck which struck him was a white truck loaded with coal and weighed 6000 pounds.

Three distinct rated eye witnesses testified that one of them testified that appellee was traveling about to two miles per hour that he slowed down for the crossing; that appellant's truck was going thirty to forty miles per hour; that it hit and slacken speed and gave no alarm or warning signal of any kind; that appellee's truck was knocked thirty or forty feet. The three witnesses for appellee testified that when appellee reached the intersection he was going five to ten miles per hour.

Further the driver of appellant's truck testified that as he approached the intersection his truck was going fifteen or eighteen miles per hour and was straddling the south car track. He looked first to the south, then to the north and then back south. When he looked south the second time he was slightly past into the intersection east of the curb. At that time appellee was on the south sidewalk line of Main Street, about five to eight feet west of the curb; that appellee's truck was going twenty four to twenty eight miles per hour; that appellant's truck turned slightly to the north and appellee turned slightly to the west, and the left front wheel of appellee's truck struck the right side of appellant's truck just back of the right front wheel, causing appellant's truck to swerve in a southeasterly direction and run into a pole at the northeast corner of the intersection.

3.

Jones, a boy who was riding with Harlon testified practically the same as Harlon. He testified that appellant's truck was traveling fifteen to twenty miles an hour, and that it was one-third of the way across the intersection before appellee's truck reached the intersection; that appellee was traveling twenty five to thirty miles per hour.

Section 33 of the Motor Vehicle Act, provides that all vehicles traveling upon public highways shall give the right of way to other vehicles approaching along intersecting highways from the right, and shall have the right of way over those approaching from the left. Under this statute appellee not only had the right of way, but the preponderance of the evidence shows that he reached the intersection before appellant's truck. It was therefore the duty of appellant's driver to stop his truck, or to sufficiently check its speed to allow appellee to pass. As a general rule the violation of a statute is negligence per se, and if the negligence contributes to, or causes, the injury it is actionable as a matter of law. *Lenertz vs. Funk*, 224 Ill. App. 180; *Partridge vs. Eberstein*, 225 Ill. App. 209. Not only did appellee have the right of way and reach the intersection first but the preponderance of the evidence shows that he was traveling at a reasonable rate of speed; that he slowed down as he reached the intersection; that he looked both ways before he attempted to cross. On the other hand, the preponderance of the evidence shows that appellant's truck was traveling at an excessive rate of speed; that it gave no alarm or warning; that it did not slacken its speed, and that it ran into the truck of appellee. The preponderance of the evidence establishes a clear case against appellant on each and all counts of the declaration, shows that appellee was in the exercise of due care and caution for his own safety, and that he was not guilty of contributory negligence which barred his right to recover.

It is insisted that the damages are excessive for the reason that appellee and his truck were not seriously injured. The

Jones, a boy who was riding with appellant's truck
strictly the same as before. He testified that appellant's truck
was traveling fifteen to twenty miles an hour, and that it was
one-third of the way across the intersection when appellant's
truck reached the intersection; that appellant was traveling twenty
five to thirty miles per hour.

Section 23 of the Motor Vehicle Act, provides that all
vehicles traveling upon public highways shall give the right of way
to other vehicles approaching along intersecting highways from the
right, and shall have the right of way over those approaching from
the left. Under this statute appellee not only had the right of way,
but the preponderance of the evidence shows that he reached the
intersection before appellant's truck. It was therefore the duty
of appellant's driver to stop his truck, or to sufficiently check
its speed to allow appellee to pass. As a general rule the violation
of a statute is negligence per se, and if the negligence constitutes
an injury it is actionable as a matter of law.
Dexter vs. Funk, 224 Ill. App. 180; Farbridge vs. Bernstein, 225
Ill. App. 209. Not only did appellee have the right of way and reach
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down as he reached the intersection; that he looked both ways
before he attempted to cross. On the other hand, the preponderance
of the evidence shows that appellant's truck was traveling at an
excessive rate of speed; that it gave no alarm or warning; that it
did not slow down its speed, and that it ran into the truck of appellee.
The preponderance of the evidence establishes a clear case against
appellant on each and all counts of the declaration, shows that
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safety, and that he was not guilty of contributory negligence which
barred his right to recover.
It is insisted that the damages are excessive for the
reason that appellee and his truck were not seriously injured. The

evidence on behalf of appellee shows that he was rendered unconscious. He was taken to a hospital where he remained about two hours and then was taken to his home at his own request. He remained at home about thirty two days and was confined to his bed about twelve days. He testified he had a cut on the left arm, to the bone, about three or four inches long, which it took three stitches to close. His ribs were broken on the left side. The skin on the right shoulder was torn about two inches. His back, side, and one leg were bruised. The brace on the artificial limb was bent in a V shape and bruised the bone. His hips were skinned, and they were black and blue. His chest was sore. He testified he had pains on his left side at the time of the trial; that at night he was restless and could not sleep; that he had pains for thirty days after the accident mostly in the side; that he was bandaged for three weeks; that he has headaches at the present time; that for forty days he could do no work, and for forty more days he was able to work half time; that he was earning \$13.50 per day, which he lost for forty days, and \$6.75 which he lost for forty days. He testified he paid \$62.00 for doctor, hospital, and XRay bills, making a total actual loss of \$872.00, to say nothing of his pain and suffering.

As to the injury to the car, the evidence on behalf of appellee shows that his truck was practically new. It had been driven about two months for a distance of 700 or 800 miles, and was worth \$950.00. The frame was bent into a V shape and had to be replaced. The starter, starter plate, the differential and transmission were broken. The drive shaft housing was cracked and the drive shaft was bent. The transmission was cracked on both sides. The engine was knocked out of line about four inches. The cab was broken from the box and was knocked off. One front wheel was broken and two tires were flat. The axle was bent, the battery was broken, brake rods were bent, and the gear shaft was knocked loose from the transmission; that no part of the truck escaped injury but the back

transmission; that most of the shock occurred in the rear
brake rods were bent, and the rear shaft was knocked loose from the
and two tires were flat. The axle was bent, the battery was broken,
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The engine was knocked out of the usual four inches. The car was
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driven about two months for a distance of 700 or 800 miles, and
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doctor, hospital, and other bills, making a total actual loss
\$0.75 when he lost for forty days. He testified he had \$25.00 in
he was earning \$15.00 per day, which he lost for forty days, and
no work, and for forty more days he was able to work half time; that
has happened at the present time; that for forty days he could do
possibly in the city; that he was engaged for time and that he
not, either; that he had been for thirty days after the accident
at the time of the trial; that at night he was nervous and could
his chest was sore. He testified he had pains on the left side
the frame. His ribs were swollen, and they were blue and black.
The bones on the left side had been in a V shape and broken
was torn about two inches. His head, side, and arm were broken.
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about thirty two days and was confined to his bed about three days.
then was taken to his home at his own request. It remained at home
He was taken to a hospital where he remained about two weeks and

evidence on behalf of appellee shows that he was rendered incapable of

5.

wheels, springs, radiator, and windshield. Appellee and two experienced repair men testified that the truck could not be repaired, that it would cost more to repair it than it was worth, that after the accident it was worth from \$50.00 to \$75.00.

On the other hand, the evidence on behalf of appellant was that the truck was under a chattel mortgage to the American Bankers Company, and after the accident was repaired, as good as new, for \$189.06. The contract price for the repairs was \$250.00. The evidence shows that this garage did considerable repair work for the American Bankers Company and did so at a flat rate, that is, it charged a certain stated price for a job regardless of the amount of time or material which it took to do it, and that it also gave to the American Bankers Company a cash discount. It was admitted that the usual price for making such repairs was \$1.50 per hour for the labor, together with the cost of the material. For example, the bill, which is itemized, shows that \$10.00 was charged for making the repairs on the cab, but it also appears that it took 13½ hours to make the repairs on the cab, which at \$1.50 per hour, would amount to \$20.25, which was over double the amount charged in the itemized statement. The same condition existed as to other items of repair. The evidence also shows that after the truck was repaired it was sold for about \$500.00. If it was originally worth \$950.00 and it cost \$189.06 to repair it, and it was sold for about \$500.00, there was a loss of \$639.06, which amount added to the \$872.00 actual damages to appellee for personal injuries made a total of \$1511.06 actual damages proven, which were within \$331.49 of the amount of the judgment. The case was tried upon the theory of appellee that the damages could not be repaired, and upon the theory of appellant that they were repaired. Regardless of whichever theory the jury saw fit to adopt, the damages assessed were not against the weight of the evidence when the personal suffering of appellee was taken into account, and the judgment should not be reversed because

wheels, springs, radiator, and windshield. Appellants and the experienced repair men testified that the truck could not be repaired, that it would cost more to repair it than it was worth, that after the accident it was worth from \$50.00 to \$71.00.

On the other hand, the evidence on behalf of appellee was that the truck was under a written contract to the American Bankers Company, and after the accident was repaired, as per a new, for \$189.06. The contract price for the repairs was \$189.06. The evidence shows that this figure did considerably repair work for the American Bankers Company and did so at a flat rate, that is, it charged a certain stated price for a job regardless of the amount of time or material which it took to do it, and that it also gave to the American Bankers Company a cash discount. It was admitted that the usual price for making such repairs was \$1.50 per hour for the labor, together with the cost of the material. For example, the bill, which is itemized, shows that \$10.00 was charged for making the repairs on the cab, but it also appears that it took 12 hours to make the repairs on the cab, which at \$1.50 per hour, would amount to \$20.25, which was over double the amount charged in the itemized statement. The same condition existed as to other items of repair. The evidence also shows that after the truck was repaired it was sold for about \$500.00. If it was originally worth \$500.00 and it cost \$189.06 to repair it, and it was sold for about \$500.00, there was a loss of \$639.06, which amount added to the \$875.00 actual damages to appellee for personal injuries made a total of \$1514.06 actual damages proven, which were within \$21.49 of the amount of the judgment. The case was tried upon the theory of appellee that the damages could not be repaired, and upon the theory of appellant that they were repaired. Regardless of whichever theory the jury saw fit to adopt, the damages assessed were not within the weight of the evidence when the personal suffering of appellee was taken into account. And the judgment should not be reversed because

6.

the damages are excessive.

The last thing before appellant closed its case it offered in evidence a written statement made by appellee after the accident. After appellant closed its case appellee was immediately called in rebuttal and was asked under what circumstances he signed the statement which had been offered in evidence, and to whom he had been talking before he signed it. He replied, "I do not know who this man was. I was in the Inter-Ocean Insurance Company's office." Appellant objected to the answer and the objection was sustained. Appellant asked leave to withdraw a juror and continue the case. The motion was argued out of the presence of the jury and was overruled. During the argument to the jury, a statement was made by counsel for appellee which was objected to. Counsel for appellee then said: "I was arguing about repairing the automobile truck, and that after it was taken by the insurance company -I mean banking - the American Banking Company, which was referred to, I was interrupted in my argument." Appellant objected to appellee making any statement about an insurance company, that there was no insurance company involved, and that the statement was prejudicial. Counsel for appellee replied that he wanted to state to the court and jury that it appeared, under the evidence, that the car was taken back by some banking company, and that it was to that which he referred, and to that only, and that he had no reference to anything or anybody else.

It is insisted by appellant that these two remarks were an attempt on the part of appellee to get before the jury the fact that there might be an insurance company interested in the case; that such attempts constituted reversible error, and the judgment should be reversed. It has uniformly been held that any reference to an insurance company is improper. It has not, however, been held in all cases that the admission of such evidence constitutes reversible error. An examination of the authorities will show that where judgments have been reversed, usually other errors were committed, or

the damages are excessive.

The last thing before appellant closed his case is that in evidence a written statement was by appellee after the accident. After appellant closed his case appellee was immediately called in rebuttal and was asked under what circumstances he signed the statement which had been offered in evidence, and to whom he had been talking before he signed it. He replied, "I do not know who this man was. I was in the Inter-Ocean Insurance Company's office." Appellant objected to the answer and the objection was sustained. Appellant asked leave to withdraw a juror and continue the case. The motion was granted out of the presence of the jury and was overruled. During the argument to the jury, a statement was made by counsel for appellee which was objected to. Counsel for appellee then said: "I was arguing about repeating the automobile truck, and that after it was taken by the insurance company - I mean burning the American Banking Company, which was referred to, I was interrupted in my argument." Appellant objected to appellee making any statement about an insurance company, that there was no insurance company involved, and that the statement was prejudicial. Counsel for appellee replied that he wanted to state to the court and jury that it appeared, under the evidence, that the car was taken back by some banking company, and that it was to that which he referred, and so that only, and that he had no reference to anything or anybody else. It is insisted by appellant that these two remarks were an attempt on the part of appellee to get before the jury the fact that there might be an insurance company interested in the case; that such statements constituted reversible error, and the judgment should be reversed. It has uniformly been held that any reference to an insurance company is improper. It has not, however, been held in all cases that the admission of such evidence constitutes reversible error. An examination of the authorities will show that there have been many cases where errors were committed, or

7.

the case was close on the facts and the damages were large, or that counsel persisted in their attempt to present this question to the jury after objections had been sustained. In *Mithen vs. Jeffery*, 259 Ill. 372, it was held that the matters complained of have not always been considered grounds for reversing a judgment. In the following cases there were other errors which contributed to the reversal: *McCarthy vs. Spring Valley Coal Co.*, 232 Ill. 473; *Purcell vs. Degenhardt*, 202 Ill. App. 611; *Monblatt vs. Young*, 199 Ill. App. 312; *Wiersema vs. Lockwood*, 147 Ill. App. 33; *Turner vs. Lovington Coal Mining Co.*, 156 Ill. App. 60; *Emery Dry Goods Co. vs. DeHart*, 130 Ill. App. 244; *Hofer vs. Chicago, Burlington and Quincy Railroad Co.*, No. 7437, not reported, the opinion being filed in this court May 18, 1925. In *El Dorado Coal and Coke Co. vs. Swann*, 227 Ill. 586; *Altitus vs. Spring Valley Coal Co.*, 246 Ill. 32, and *Kenney vs. Marquette Co.*, 243 Ill. 396, it was held that the admission of evidence of this kind was not sufficient under the facts to reverse the judgment.

In the case at bar we do not think there was any intent on the part of counsel for appellee to violate this rule, or to get improper evidence before the jury. Appellee was not asked about any insurance company. He was merely asked with reference to the person to whom he had been talking when the written statement was made, and he volunteered the answer to which objection is made. In the second instance, we are convinced that the statement to which objection was made was the mere slip of the tongue, and counsel really intended to say the American Banking Company instead of insurance company. Appellant insists this error should work a reversal because the evidence is close and the verdict is excessive. We do not agree with either of these contentions. We have held that the evidence was not close and that the judgment was not excessive. We do not think the remarks were sufficient to justify a reversal.

8.

The twelfth instruction given by the court of its own motion was as to the measure of damages, first, in case the truck could be repaired, and second, in case it could not be repaired. Objection is made to this instruction on the ground that the evidence shows that the truck was repaired, therefore no instruction should have been given on the theory that the truck was so badly damaged that it could not be repaired. Appellee had a right to present his theory of the case. On the other hand appellant tried the case upon the theory that the truck had been repaired. It was a question for the jury to say what damages should be allowed. The twelfth instruction announced the correct rule under both theories. *Crossen vs. Chicago & Joliet Electric Railroad Co.*, 158 Ill. App. 42; *Latham vs. Cleveland, Cincinnati, Chicago & St. Louis Railway Co.*, 164 Ill. App. 559; *Koch vs. Pearson*, 219 Ill. App. 468; *McNamara vs. Nelson*, No. 7445, decided by this court and not reported. There was no error in giving this instruction.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

The twelfth instruction given by the court of the Ohio
 motion was as to the measure of damages. First, in case the
 could be repaired, how much, in case it could not be repaired.
 Option is made to this instruction on the ground that the evidence
 shows that the truck was repaired, therefore no instruction should
 have been given on the theory that the truck was not repaired.
 that it could not be repaired. Appellate had a right to present its
 theory of the case. On the other hand appellant based the case upon
 the theory that the truck had been repaired. It was a question for
 the jury to say that damages should be allowed. The twelfth instruction
 announced the correct rule under both theories. *Green v. Chicago*
& Joliet Electric Railroad Co., 158 Ill. App. 43; *Lebanon v.*
Cleveland, Cincinnati, Chicago & St. Louis Railway Co., 164 Ill. App.
 539; *Boos v. Pearson*, 219 Ill. App. 468; *Kohers v. Wilson*, No.
 145, decided by this court and not reported. Where was the error
 in giving this instruction.

We find no reversible error and the judgment will be

affirmed.

Judgment affirmed.

STATE OF ILLINOIS, { ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 7th day of
Mar, in the year of our Lord one thousand
nine hundred and twenty- six.

Justus L. Johnson
Clerk of the Appellate Court.

STATE OF ILLINOIS
COUNTY OF [illegible]
I, [illegible], Clerk of said County, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of said County.
In testimony whereof, I have hereunto set my hand and the seal of said County, at [illegible], this [illegible] day of [illegible], A.D. 19[illegible].
[illegible]
Clerk of said County

Abstract only
Rehearing Denied
April 7, 1926.

AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the sixth day of
October, in the year of our Lord one thousand nine hundred
and twenty-five, within and for the Second District of the
State of Illinois:

240 I.A. 679

Present--The Hon. NORMAN L. JONES, Presiding Justice.

Hon. AUGUSTUS A. PARTLOW, Justice.

Hon. THOMAS M. JETT, Justice.

JUSTUS L. JOHNSON, Clerk.

E. J. WELTER, Sheriff.

BE IT REMEMBERED, that afterwards, to-wit: On

FEB 3 - 1926 the opinion of the Court was filed in the
Clerk's office of said Court, in the words and figures
following, to-wit:

Samuel A. Gibson,

appellee,

vs.

Calvin R. Mower,

appellant,

Appeal from the Circuit Court

of Winnebago County.

240 I.A. 679

Partlow, J.

Appellee, Samuel A. Gibson, obtained a judgment for \$2000 against appellant, Calvin R. Mower, in the circuit court of Winnebago county, as a commission for the sale of stock under a verbal contract, and an appeal has been prosecuted to this court.

The suit was originally against appellant and his wife Annie P. Mower. The declaration consisted of the common counts, and a special count which alleged that appellee at the verbal request of appellant procured for appellant, a purchaser for the stock of appellant in the Rockford Sand & Gravel Company, at \$40,000 par value and that appellant refused to pay appellee the \$2000 agreed upon. The general issue was filed. At the close of the evidence on behalf of appellee, and at the close of all of the evidence, a motion was made to direct a verdict in favor of appellants, which motions were overruled. After a verdict had been returned against both defendants, a motion for a new trial was made. Appellee was granted leave to file an amended declaration which was against appellant alone, and consisted of the common counts, and a special count substantially the same as the declaration on which the case was tried. The original plea was ordered to stand as the plea to the last declaration. The motion of appellant for a new trial was overruled, and judgment was entered against appellant.

The evidence shows that the Rockford Sand & Gravel Company was a corporation doing a general sand and gravel business near the city of Rockford. Its stock consisted of 800 shares of which appellant owned 10, his wife 390, and appellee and B. A. Knight had 200 shares each. On May 6, 1922, appellant and his wife gave to B. A. Knight a written option as follows: "In the event you, or your order, exercise your option, bearing date May 6, 1922, for the purchase of our \$40000 par

Sammal A. Gibson,

appellee,

appeal from the Circuit Court

of Winnebago County.

vs.

Calvin R. Nower,

appellant.

2401 A. 679

Barlow, J.

appellee, Sammal A. Gibson, obtained a judgment for \$2000 against appellant, Calvin R. Nower, in the circuit court of Winnebago county, as a commission for the sale of stock under a verbal contract, and an appeal has been prosecuted to this court.

The suit was originally against appellant and his wife Anne C. Nower. The declaration consisted of the common count, and a special count which alleged that appellee at the verbal request of appellant procured for appellant, a purchaser for the stock of appellee in the Rockford Land & Gravel Company, at \$40,000 per acre and that appellee refused to pay appellee the \$2000 agreed upon. The verbal count was filed. At the close of the evidence on behalf of appellee, and at the close of all of the evidence, a motion was made to direct a verdict in favor of appellants, which motions were overruled. After a verdict had been returned against both defendants, a motion for a new trial was made. Appellee was granted leave to file an amended declaration which was against appellant alone, and consisted of the common count, and a special count substantially the same as the declaration in which the case was tried. The original plea was ordered to stand as the plea to the last declaration. The motion of appellant for a new trial was overruled, and judgment was entered against appellant.

The evidence shows that the Rockford Land & Gravel Company was a corporation doing a general land and gravel business near the city of Rockford. Its stock consisted of 200 shares of which appellee owned 10, his wife 300, and appellee and B. A. Knight had 200 shares each. On May 6, 1922, appellant and his wife gave to B. A. Knight a written option as follows: "In the event you, or your estate, exercised your option, bearing date May 6, 1922, for the purchase of our \$20000 per

value of the Capital Stock of the Rockford Sand and Gravel Company, we hereby agree to pay you a commission of five per cent for services in making such sale." On May 11, 1922, this option was assigned by Knight to appellee, and was later extended on June 6, to September 5. On September 5, 1922, appellant and wife gave a similar option in almost the identical language to appellee, which option was to expire on November 5, 1922. During the time these options were in force, appellee made several unsuccessful attempts to sell the stock. Finally a plan was formulated for the consolidation of the Rockford Sand & Gravel Company, the Carrico Stone Company, and Hart & Page Company, under the name of the Northern Illinois Supply Company. By this plan the stock of appellant and his wife was to be purchased. During the formation of these plans appellant represented the Rockford Sand & Gravel Company, Fred Carrico represented the Carrico Company, and Hart & Page represented their organization. The plan was not perfected by November 5, the date the written option expired. Prior to the expiration of the written option, appellee had a talk with appellant in which he informed him that it would be impossible to complete the consolidation before the date upon which the option expired, and appellee requested appellant to extend the option, or give him a new one. Appellant refused to give a further written option, but appellee testified that after appellant refused to give a written option, appellant said: "Bring on your money and I'll pay your commission if you carry the deal through." This conversation was in the presence of Frank R. Larson, a bookkeeper in the employ of appellee, who testified to substantially the same conversation as related by appellee. Appellant denies that any such conversation took place, and this is the conversation upon which the right of recovery is based. If the jury believed the testimony of appellant and Larson, and did not believe the testimony of appellee, then they were justified in finding that there was such a verbal contract between appellant and appellee.

It is contended by appellant that during the negotiations for the sale of this stock after November 5, he represented himself and his wife, and appellee was not his agent, and for that reason there can be no recovery. The evidence shows that on January 6, 1923, a meeting was held at the office

value of the United States of the National Bank and Trust Company, as
 hereby given to pay for a commission of 10 per cent for services in
 making such sale." On May 11, 1932, this option was assigned by United
 to appellee, and was later extended on June 1, to September 1, 1932.
 On September 1, 1932, appellee and wife gave a similar option in almost the same
 terms to appellee, which option was to expire on November 1, 1932.
 During the time these options were in force, appellee made several attempts
 to sell the stock. Finally a plan was formulated for the
 cancellation of the National Bank and Trust Company, the United States
 Bank, and First State Bank, under the name of the Northern Illinois
 Supply Company. By this plan the stock of appellee and his wife was to
 be purchased. During the formation of these plans appellee represented
 the National Bank and Trust Company, and United States Bank represented the
 Company, and First State Bank represented their opposition. The plan was
 perfected by November 1, the date the written option expired. Prior to
 the expiration of the written option, appellee had a talk with appellant
 in which he informed him that it would be impossible to complete the trans-
 action before the date upon which the option expired, and appellee re-
 quested appellee to extend the option, or give him a new one. Appellee
 refused to give a further written option, but appellee testified that
 after appellee refused to give a written option, appellee said: "I'll
 on your money and I'll pay your commission if you carry the deal through."
 This conversation was in the presence of Frank J. Larson, a bookkeeper in
 the employ of appellee, and testified to substantially the same conversa-
 tion as related by appellee. Appellee denies that any such conversation
 took place, and this is the conversation upon which the right of recovery
 is based. If the jury believe the testimony of appellee and Larson, and
 did not believe the testimony of appellee, then they were justified in
 finding that there was such a verbal contract between appellee and appellee.
 It is contended by appellee that during the negotiations for the sale
 of the stock after November 1, he represented himself and his wife, and
 appellee was not his agent, and for that reason there can be no recovery.
 The evidence shows that on January 6, 1933, a meeting was held at the office

of the Rockford Sand & Gravel Company at which appellant, appellee, Hart, Carrico, Knight, and Larson were present, and a tentative agreement was drawn up for the sale of the Mower stock, but the agreement was not signed at that time. On February 19, 1923, another meeting was held and a tentative agreement was drawn up and executed by which the stock of appellant and his wife was purchased. It appears that at one of these meetings Mrs. Mower was present, but there is some uncertainty as to which meeting it was. Within the time provided in the written agreement, appellant and his wife received \$40,000 for their stock, together with interest from November 1, 1922, to the date of payment. The Northern Illinois Supply Company was formed from all of the stock purchased, and appellee received stock of the consolidated enterprise for the services which he performed in perfecting the consolidation. Appellee demanded of appellant the \$2000, which he claimed was due for the sale of his stock. Appellant refused to pay, and this suit was brought.

The first error urged is that the court should have directed a verdict at the close of appellee's evidence for the reason that the declaration charged a joint liability and the evidence failed to show a joint liability; that at the close of all of the evidence the motion to direct a verdict should have been allowed because the evidence showed that appellee was acting in a dual capacity as agent for both parties and for this reason could not recover; that the instructions, verdict, and motion for a new trial were on the theory of a joint liability; that under the facts the jury was called upon to decide whether there was a joint liability, or no liability at all; that the court by permitting an amendment to be made to the declaration after verdict, changed the liability from a joint to a several liability, and substituted the judgment of the court for the finding of the jury.

Section 39, of the Practice Act provides that at any time before final judgment in a civil suit, amendments may be allowed on such terms as are just and reasonable, introducing any party necessary to be joined as plaintiff or defendant, discontinuing as to any joint plaintiff or joint defendant, changing the form of the action, and in any matter either

of the Board and a Gravel Company at which appellant, appellee, and Carlos, Knight, and Larson were present, and a tentative agreement was drawn up for the sale of the lower stock, but the agreement was not signed at that time. On February 19, 1925, another meeting was held and a tentative agreement was drawn up and executed by which the stock of appellant and his wife was purchased. It appears that at one of these meetings Mrs. Fowler was present, but there is some uncertainty as to which meeting it was. Within the time provided in the written agreement, appellant and his wife received \$40,000 for their stock, together with interest from November 1, 1922, to the date of payment. The Northern Illinois Supply Company was formed from all of the stock purchased, and appellee received stock of the consolidated enterprise for the services which he performed in perfecting the consolidation. Appellee demanded of appellant the \$2000, which he claimed was due for the sale of his stock. Appellant refused to pay, and this suit was brought.

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Section 9, of the Practice Act provides that at any time before final judgment in a civil suit, amendments may be allowed on such terms as are just and reasonable, introducing any party necessary to be joined as plaintiff or defendant, discontinuing as to any joint plaintiff or joint defendant, changing the form of the action, and in any matter other

of form or substance, in any process, pleading or proceeding which may enable the plaintiff to sustain the action for the claim for which it was intended to be brought. Under this Section it has been held that where a verdict is rendered against two defendants, there may be a dismissal as to one and the entry of a judgment against the other. *Kasper v. People*, 230 Ill. 342; *Bauer v. Rusetos & Co.*, 225 Ill. App. 27; *Posvie v. Harford*, 211 Ill. App. 273; *Marcinkevich v. Wilson*, 183 Ill. App. 147.

At the close of all of the evidence even if the court might properly have directed a verdict upon the ground that the declaration charged a joint liability and the evidence showed a several liability, neither appellant nor his wife was injured thereby. The wife is in no position to complain for the reason that the filing of the amended declaration, after verdict, was in effect a dismissal of the suit as to her. She is not a party to this appeal, and the subsequent action of the court was in her favor. If the evidence showed a several liability as to the appellant, and the declaration charged a joint liability against him and his wife, then under the statute, appellee had a right, after verdict, to amend the declaration and take judgment against appellant alone.

The question of a dual agency, if there was one, did not arise for the first time after appellee closed his evidence and before all the evidence was closed as is claimed by appellant. All of the facts relative to the transaction were known to appellant on the day the stock was paid for, which was many months before the suit was begun and tried, and therefore he was not taken by surprise by the amendment of the declaration. We do not think the appellant is in any position to complain that the court refused to direct a verdict, or that the declaration was subsequently amended, and that he alone was held liable.

It is insisted that there was a dual agency which prevented appellee from a recovery; that appellee was the agent of appellant and demanded compensation therefor; that the evidence shows he was also the agent of Garrico, Hart and Page; that they gave him stock for his services in promoting the consolidation, and they did not know he was the representative of appellant.

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The question of a dual agency, if there was one, did not arise for the first time after appellee closed his evidence and before all the evidence was closed as is claimed by appellant. All of the facts relative to the transaction were known to appellant on the day the stock was paid for, which was many months before the suit was begun and tried, and therefore he was not taken by surprise by the amendment of the declaration. We do not think the appellant is in any position to complain that the court refused to direct a verdict, or that the declaration was subsequently amended, and that he alone was held liable.

It is insisted that there was a dual agency which prevented appellee from a recovery; that appellee was the agent of appellant and defendant in connection therewith; that the evidence shows he was also the agent of Garlick, Hart and Levy; that they gave him stock for his services in promoting the consolidation, and they did not know he was the representative of appellant.

It is a well established general rule of law that a broker cannot be the agent of both the buyer and the seller. *Warrick v. Smith*, 137 Ill. 504; *Young v. Trainor*, 158 Ill. 428; *Hafner v. Herron*, 165 Ill. 242. This rule is based upon the well known fact that an agent cannot serve two masters. It is the duty of the agent to obtain the best possible price and terms for his principal and he cannot do so if he is trying to serve both parties. He is chargeable with the utmost loyalty and good faith in his dealings. There are, however, exceptions to the rule that he cannot receive compensation from both. A broker, having no discretion, and not being required to use any endeavor to get for his principal anything but the price fixed by his principal, and there being no duty upon him to do aught save one authorized thing, it has been held that his agency involved no duty but to secure a sale upon the terms as fixed, and having performed this duty he is entitled to his compensation, although he may have also served the purchaser. *O'Neill v. Sinclair*, 54 Ill. App. 298; *Jones v. Missouri Lumber Co.*, 166 Ill. App. 266; *Mechem on Agency*, Sec. 973. Under such circumstances, the broker is regarded only as a middleman.

The two written options show that the employment of appellee was not the usual employment where property is placed in the hands of an agent for sale. The language of the options is "in the event that you, or your order, exercise your option" for the purchase of our \$40000 par value, we agree to pay you a commission of five per cent. These contracts were options which appellant gave appellee to purchase at a fixed price within a given time. The price was fixed by appellant and he received the price as fixed by him. Appellee was under no obligations to appellant to secure a better price. It made no difference to appellant who purchased the stock, or for what purpose it was purchased. All appellant was interested in was the price. The only duty imposed on appellee was to exercise the option within the time fixed and pay the amount specified, both of which were done, and thereupon appellee became entitled to his commission.

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It is a well established general rule of law that a broker cannot be the agent of both the buyer and the seller. *Wright v. Smith*, 111 Ill. 504; *Young v. Trainor*, 113 Ill. 423; *Waters v. Horton*, 103 Ill. 241. This rule is based upon the well known fact that an agent cannot serve two masters. It is the duty of the agent to obtain the best possible price and terms for his principal and he cannot do so if he is trying to serve both parties. He is chargeable with the utmost loyalty and good faith in his dealings. There are, however, exceptions to the rule that he cannot receive compensation from both. A broker, having no discretion, and not being required to use any endeavor to act for his principal anything but the price fixed by his principal, and there being no duty upon him to do anything save one authorized thing, it has been held that his agency involved no duty but to secure a sale upon the terms as fixed, and having performed this duty he is entitled to his compensation, although he may have also served the other master. *Wright v. Smith*, 111 Ill. 504; *Young v. Trainor*, 113 Ill. 423; *Waters v. Horton*, 103 Ill. 241. Under such circumstances, the broker is regarded only as a middleman.

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buyer and the seller, we do not think the action can be defeated on the grounds of a dual agency. A broker can collect a commission from both parties with their knowledge and consent, or with such knowledge coupled with proof of facts and circumstances from which consent may be reasonably inferred. *Keach v. Bunn*, 116 Ill. App. 397. It appears from the evidence that there were numerous conversations between appellee and appellant with reference to the consolidation of these corporations. Appellant was fully aware of the steps taken by appellee to form this new corporation. He knew who were to be the purchasers of the stock and the purpose for which it was being purchased. He was aware of these facts at the time the verbal contract was made. He claims he did not know that his stock was being purchased for these promoters for the benefit of the new corporation, but we do not think this contention is sustained by the evidence. On the other hand the evidence shows that appellee was one of the promoters engaged in forming this new corporation. He was working for himself and his associates. It was known to the promoters that the stock of appellant was to be purchased and that appellee was to purchase it. The mere fact that appellee received stock for his services in promoting the corporation was not sufficient to deprive him of his commission. The agency was with the knowledge and consent of all parties and for this reason appellee was entitled to his commission.

Complaint is made of each instruction given on behalf of appellee. It will be impossible within the reasonable limits of an opinion to pass upon each of these objections in detail. We have examined each objection and find that each instruction can be sustained upon authority and has been approved by decisions of the Supreme and Appellate courts. The instructions as given were applicable to appellant and his wife, but they were each of them equally applicable to appellant if the suit had been against him alone. From an examination of all of the instructions we are of the opinion that they fully presented every rule of law applicable to the facts, and that there was no error in any instruction given for appellee.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

...and the result, as to not being the origin can be derived from the
...of a good theory. A doctor can collect a commission from whom
...with the knowledge and consent, or with such knowledge and
...with proof of these and circumstances that which consent may be treated
...appealed. It is not, I think, the law. It appears from the
...evidence that there were various conversations between appellant and
...appellant with reference to the consolidation of these corporations.
...Appellant was fully aware of the state taken by appellee to form this
...new corporation. He knew who were to be the directors of the same
...and the purpose for which it was being purchased. He was aware of these
...facts at the time the verbal contract was made. He stated he did not
...know that his stock was being purchased for those purposes for the
...benefit of the new corporation, but he is not taking this corporation as
...sustained by the evidence. On the other hand the evidence shows that
...appealed was one of the promoters engaged in forming this new corporation.
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...motors that the stock of appellant was to be purchased and that appellee
...was to purchase it. The state fact that appellee received stock for his
...services in promoting the corporation was not sufficient to deprive him
...of his corporation. The question was if the knowledge and consent of all
...parties and for this reason appellee was entitled to his commission.
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...appealed.

We find no reversible error and the judgment will be affirmed.

Judgment affirmed.

STATE OF ILLINOIS, } ss.
SECOND DISTRICT.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court,
in and for said Second District of the State of Illinois, and keeper of the Records and Seal thereof,
do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in
the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of
said Appellate Court, at Ottawa, this 9th day of
april in the year of our Lord one thousand
nine hundred and twenty-six.

Justus L. Johnson
Clerk of the Appellate Court.

STATE OF ILLINOIS
COUNTY OF [illegible]
I, [illegible], Clerk of the Court,
do hereby certify that the within and foregoing
is a true and correct copy of the original
as the same appears from the records of the
Court of the County of [illegible] State of Illinois.
Witness my hand and the seal of the Court at
Springfield, Illinois, this [illegible] day of [illegible] 19[illegible].
[illegible]
Clerk of the Court

5012a

General No. 7847

OCTOBER TERM, 1925.

Agenda No. 22

Thomas E. Cockin,
vs. Appellant.

Charles M. Strawn,
Appellee.

Charles M. Strawn,
vs. Appellee.

Thomas E. Cockin,
Appellant,

240 I.A. 680

Consolidated Case.

Appeal from Morgan.

Niehaus, P.J.

The appellee, Charles M. Strawn, brought this suit in assumpsit to recover from the appellant, Thomas E. Cockin, as an endorser the amount of principal and interest a promissory note dated June 15, 1922, made by C. P. Hudson and Sarah J. Hudson, his wife, payable to the order of Charles Dolan three years after date, for the sum of \$15000.00; interest at the rate of 6% per annum. The note is secured by a mortgage on real estate in Cameron county, Texas. The mortgage contains a provision, that in case default is made in the payment of the interest on the note when due, and the default continues for ten days, then at the election of the mortgagee or his assigns, the whole debt and interest to become due and collectible at once; and that the mortgage might be foreclosed in the same manner, and with the same effect, as if the indebtedness had matured.

The declaration filed in the case averred, that the note although not due by its terms, had become due and payable by reason of this provision in the mortgage, and the failure to pay the interest which had become due and payable prior to the institution of the suit; and that the assignee of the note and mortgage had exercised the privilege contained in the provision of the mortgage referred to, and declared the whole debt due and payable. The appellant filed a general and special demurrer to

the declaration, one of the ground being that the note was not due by its terms, and that the suit therefore was premature. The demurrer was overruled. Appellant thereupon pleaded non-assumpsit, and two special pleas alleging that the endorsement and delivery of the note were obtained by fraud and circumvention, and that the endorsement on the note was without a good and valuable consideration therefor. Thereafter the appellant filed a bill in equity praying, that the endorsement and assignment of the promissory note referred to, and the contract made in connection therewith between the appellant and the appellee, be cancelled and annulled; and seeking to enjoin the prosecution of the suit at law; and enjoining the selling or assigning or transferring of the promissory note; and other relief. The bill was afterwards amended; and in the amended bill it is charged, that the appellant on or about the 20th day of September, 1922, was the owner of an equity in land located in the state of Minnesota, which had an estimated value of \$5000.00; and that he placed the matter of the sale or trade of his interest in the land in question in the hands of one J. Walton Ward, a real estate broker; that he had followed the business of farming throughout his life until recent years; that his education was very limited, and that he was wholly inexperienced in matters of business outside of the occupation which he had followed; and therefore relied in the matter of the sale or trade of his interest in the Minnesota land upon the guidance and instructions of Ward; that he employed Ward to find a purchaser for his interest in the Minnesota land at such a price as would net to the appellant the sum of \$5000.00; and that it was agreed, that Ward as compensation for his work should have all that he might obtain for the Minnesota land in excess of that sum; that afterwards Ward came to the appellant, and informed him, that he had in mind a note for \$15000.00, which he could get hold of in exchange, by various transfers, to exchange for the Minnesota land;

and also informed the appellant, that the appellee, Charles W. Strawn, was the owner of certain land in Calhoun county, which was subject to a mortgage, but that the equity in the land, was worth not less than \$20000.00; and that he had a purchaser in view, who would buy the Calhoun county land at substantially \$20000.00 above the mortgage indebtedness thereon; that appellant relying upon these representations made by Ward, agreed with Ward to exchange his interest in the Minnesota land for the \$15000.00 note; but upon the express condition, that the trade would be so handled there should be no personal responsibility on the part of the appellant. That Ward thereupon took the appellant to the appellee, who was the owner of the equity in the Calhoun county land; and who represented, that it was worth more than \$15000.00 over and above the mortgage thereon; and that thereupon Ward informed appellant, that he could trade the Minnesota land to C. H. Dolan for a note which said Dolan held signed by C. T. Hudson and wife for \$15000.00, which note was secured by mortgage on certain land in the state of Texas; and that the security furnished by the mortgage on the Texas land was ample security, and made the \$15000.00 note perfectly good. The bill avers, that the appellant was not familiar with the Texas land; knew nothing about its value, and relied solely upon the representations made by Ward in reference thereto; and that thereupon agreed, that he would transfer the Minnesota land to Dolan for the note of \$15000.00 secured by the mortgage on the Texas land; and did thereupon make such exchange; but that afterwards he ascertained the fact, that the mortgage on the Texas land was a second mortgage, and subject to a prior mortgage in favor of one H. C. Lippert; and that the principal and interest of this prior mortgage amounted to more than \$10000.00, which was more than the land was worth; and that in truth and in fact the \$15000.00 note and mortgage was worthless; all of which was known to Ward at the time he was advising appellant to make the exchange and trade referred to. The bill also avers, that the

appellant ascertained the fact, that Ward and the appellee had colluded together in making the exchange; and that Ward was in fact in the employ, and was the agent of the appellee, for the purpose of disposing of the equity, which he owned in the Calhoun county land; and that they had colluded together for the purpose of cheating and defrauding appellant. The bill also avers, that after the appellant had made the exchange of his Minnesota land for the \$15000.00 note and mortgage, Ward took the appellant immediately to the appellee, and insisted that appellant endorse the note for \$15000.00 to the appellee. That Ward first went with appellant to the store of C. H. Dolan, and took the deed of appellant for the Minnesota land to Dolan, and delivered it to him at his store, and immediately returned with the note and mortgage on the Texas land signed by appellant; and that thereupon immediately drove to the office of the appellee; and that by the direction of Ward he made the trade of the \$15000.00 note and mortgage; and at that time endorsed the note and delivered it to appellee; and that the mortgage was assigned to appellee in accordance with the terms of their agreement; and that their agreement to trade and exchange was reduced to writing. The bill also avers, that the transaction referred to, and all the transactions connected therewith, was a scheme and device on the part of Ward and the appellee, to get his unqualified endorsement upon the \$15000.00 note for the purpose of holding him liable as an endorser of the note. The bill also avers, that the written agreement or contract which contains the terms upon which the trade between appellant and appellee was made, provide, that the appellee, as a condition precedent to the making of the trade, was to furnish the appellant an abstract showing merchantable title in the appellee on the Calhoun county land; and that the abstract which was furnished under the agreement, does not show such merchantable title. The bill also avers, that at and before the time of the signing of the agreement for the trade and

exchange referred to, and the delivery of the \$15000.00 note, that the appellee assured appellant that his equity in the real estate in Calhoun county was worth more than \$15000.00; that the appellant was wholly unfamiliar with the Calhoun county land, and had never seen the same, and had no information with reference to its value, and relied solely upon the representations of the appellee and Ward touching the value of the same; but states the fact to be that there is a mortgage upon the Calhoun county land for \$10800.00, with accumulated interest thereon, and that there is pending a proceeding to foreclose such mortgage; and that he is informed and verily believes, that the land is not worth the amount of the encumbrance thereon; and that all these facts were known to the appellee and Ward at the time they made the representations to the appellant concerning the value of the land above the mortgage indebtedness. To the bill of complaint the appellee Strawn filed an answer, denying all the allegations in the bill of fraud and misrepresentations averred against him; and denied the allegations charging him with acting in collusion with Ward to defraud the appellant; but admitted that a trade was made in which he received the \$15000.00 note and mortgage on the Texas land securing the same, in exchange for the Calhoun county land, subject to an encumbrance thereon of \$10800.00 which the appellant agreed to assume as part of the purchase price of the same; and that the terms and conditions of the trade were embodied in a written agreement, executed by him and the appellant. The suit at law for recovery on the notes and the bill of complaint filed by the appellant were finally consolidated by agreement of the parties to be heard and disposed of as one case.

The consolidated case was heard by the court, and the court entered judgment therein in favor of the appellee and against the appellant on the note in controversy for \$17285.00 in the assumpsit case; and dismissed the bill of complaint for want of equity. This appeal is prosecuted from the judgment, and the order dis-

missing the bill.

The evidence in this case discloses a series of fraudulent trade transactions which were brought about and manipulated by one J. Walton Ward, a real estate broker, which apparently culminated in the trade involved in this controversy. A careful perusal of the testimony and of the proofs in the record, leads to the conclusion that the chief purpose and object of the trade and exchange of properties here involved was to procure the appellant's name as endorser in making an exchange of a worthless \$15000.00 note and mortgage, to the appellee, Charles M. Strawn, so that the appellant would be legally liable as endorser on the note, and thereby enable the appellee Strawn to collect the amount due thereon from the appellant. It is apparent from the evidence, that the dominant factor, and chief instigator and manipulator of a number of shifty transactions which preceeded and were connected with the one in question, was J. Walton Ward; and it was Ward who originated the \$15000.00 note and mortgage, which was executed by C. P. Hudson and Sarah J. Hudson his wife, on 17 acres of land in Cameron County, Texas, the value of which was about \$1700.00; but subject to a prior encumbrance thereon of about \$10000.00; and Ward had procured the parties, who were financially irresponsible, to make the note and mortgage, obviously for the purpose of using it for some fraudulent purpose in a trade. This \$15000.00 note and mortgage, was afterwards fastened on the appellant, by the false representation of Ward to the appellant, that the Texas land upon which it was given, was worth at least \$1000.00 per acre. And the appellant thereupon traded his equity in Minnesota land, which he owned and valued at \$5000.00, for the \$15000.00 note and mortgage; and it was agreed between the appellant and Ward, that Ward was to have all that could be realized from the note and mortgage above the \$5000.00. In view of this situation, the next thing which Ward apparently undertook to do for the appellant, was to bring about some trade by which they could realize the amount of

money, which each of them had tied up in the \$15000.00 note and mortgage; and so Ward proposed, that the note and mortgage be traded for the land owned by the appellee in Calhoun county, which he represented to the appellant to be rich land, and worth from \$150.00 to \$175.00 per acre, or about \$20000.00. At the instance of Ward this trade was thereupon consummated. The nature, quality and value of the 143 acres of Calhoun county land which appellant received in exchange for the note and mortgage in question, clearly appears from the testimony of John H. Fleming, a former owner who had lived on the land for many years, and finally conveyed it to John Kessinger, the grantor of the appellee. His testimony is as follows: "I owned the Kessinger farm in Calhoun county; I owned it about thirty years. I lived there about five years; I was married in 1898. That fall I moved on there. I put the improvements on that farm when I bought it. *** I sold it nearly five years ago. That would be about 1919. You might call it a cash transaction, I guess. When I conveyed that farm I made the deed to Kessinger. I got \$4500.00 for it. There were drainage taxes on that at that time. I had never paid none of the drainage taxes, and I sold it subject to the drainage taxes. I do not know how much they were. I never took any pains to find out. I think it was about \$600.00. There were no other liens on the place, except the drainage taxes. I got \$4500.00, subject to the drainage tax of \$600.00. The first nine or ten years I owned it, I did not live on it. It was all in prairie grass when I bought it. As soon as I was married, in the last twenty two years, I would judge, not over three crops out of five on the average. I mean by that, that I would not get more than three crops every five years on account of the overflow. I dont think it would average a bit better than that and hardly that good. ***** I put the improvements on there twenty two years ago last fall. I built a little house - a one story house, twenty four by fourteen, I think, the front part of it, and the L fourteen by eighteen, as near as I can recollect. ***** And I built a little

barn - small barn. I do not know just exactly what size it was. Just a good small frame barn - cheap barn - twelve feet high, I believe. I could not tell you exactly the cost of the improvements, but I know at that time, twenty two years ago, building material was very cheap and I was a kind of a carpenter myself, and I done most of the work, and the house cost about \$180.00. The barn didnt cost very much either. I do not know how much - less than \$100.00, I am satisfied. I built it too. At the time I sold this property to Kessinger I dont think there were any other improvements on the place. You see, Kessinger never got his deed for quite a while after I sold it. ***** I know that about two years out of five -possibly three - you never got any crop to amount to anything. The back water would back over there. There might have been two or three years during that time that there was no back water. That average would hold good for the last twenty five years - that is, as long as I lived there. ***** With reference to the sloughs or ponds on this farm, there was one large pond up in the field there - there was when I had it - I guess three acres in it - possibly four - we never got anything out of that. That is on the north part of the farm in that sixty. Then the other eighty has got what is called cockle burr slough winds through it from one side to the other. I have seen that slough dry, but as a rule there is a little water in it. I could not estimate acreage. I guess thirty feet wide. It goes plum across the eighty - in fourteen - I think it is, it winds around crooked - if it went straight across, it would not be so bad. Down toward the southwest corner, there is a patch of timber in there with a draw across there - I guess that there had been an old creek. I would judge that the timber land not susceptible to cultivation. ***** The old Sny cuts off about three acres off of the south end of the eighty. Sometimes it is possible that the Sny overflows, if it backs up from the river and then a big flood comes down the creek. It runs over a few feet higher than it would be just from the back

water. The depth of the overflow is dependent upon whether or not there is a volume of water coming down there at the same time that the back water is there. It makes a big difference. These other overflows were nothing to compare with the time when I had to have my hogs on a platform four feet high. ***** At the time I sold this land I consider I got a good price for it." After its sale to Kessinger, and at the time of the trade in question, the land referred to had apparently reached the dignity in value of carrying the encumbrance of \$10800.00, subject to which it was traded to appellant- But who put on the encumbrance, or who holds it, the record does not disclose. Concerning the value of the land at the time of the trade in question, the great weight of the evidence, and the testimony of witnesses familiar with the land, its physical conditions and the handicaps for farming purposes justify the conclusion, that the fair cash market value of the land was about \$50.00 per acre. It is true, that some witnesses for the appellee, placed the value of the land at \$125.00 per acre; but it is apparent, that in estimating the value of the farm, they did not take into consideration or give proper consideration to the element of the overflow, and its effect on farming operations on the land. The false representations concerning the quality and value of this land were all made by Ward; and were undoubtedly made to induce the appellant to make the trade; and had that effect on the appellant, who had implicit confidence in Ward. The trade was one which the evidence shows, would result in great pecuniary benefit to the appellee; that is, if the appellant could be held legally liable as endorser on the note. Strawn would then realize \$15000.00 for his equity in the Calhoun county land, which had practically no value over the \$10800.00 mortgage encumbrance thereon; and this encumbrance the appellant in the trade assumed and agreed to pay. The appellee denies, that Ward acted in his behalf in making the trade; and denies, that he was working in collusion with Ward, in bringing about the trade, yet the chief object of the trade undoubtedly was to obtain the signature of the

appellant as an endorser on the \$15000.00 note, in order to hold him as such; and the circumstances surrounding the transactions and connected therewith however, all point to the fact, that the appellee and Ward acted in concert, and had an understanding to bring about this result. The appellee was on intimate terms with Ward, who was his cousin by marriage; they had had a number of business deals together; evidently knew each other well; and each others methods in making trades and deals. Strawn was evidently aware of the fact, that the note and mortgage in question were worthless; and his information on the subject could only have come from Ward. When the trade was proposed to him by Ward and the appellant, at his garage he accepted the same without making any inquiry about the value of the mortgage security; and there was one matter only about which he seemed to be concerned, and that was the pecuniary responsibility of the appellant as endorser of the note; and this was the matter he investigated before he took the note and mortgage. It is apparent that, what the appellee wanted to accomplish by the trade, was to get appellant as endorser on the note; and this was the same purpose which actuated Ward, in inducing the appellant to make the trade. This feature of the case is further emphasized by the testimony of William Kastrup, with whom Ward also had trading deals. Kastrup testifies, that Ward took him over to Strawn's garage, after the trade in question had been accomplished, evidently with a view to convince Kastrup of his ability to make money for his clients; and when he got there, he called out to the appellee, and among other things said to him: "Charlie, I just sold that Tom Cockin farm to Kastrup - didnt I make you \$15000.00 that quick?" (Snapping his fingers) Whereupon the appellee responded by saying "Yes you did, Bill."

We are of opinion, that the evidence sufficiently establishes the fact, that the appellee acted in collusion with Ward in the fraud which the evidence shows, was practiced upon the appellant to procure his signature as endorser upon the \$15000.00 note, in making

the trade in controversy, and to get him to execute the contract under which the transfer of the note and mortgage was made; and that the contract and the endorsement on the note, and the deed made in connection therewith, should therefore be cancelled and set aside. But the record discloses another substantial reason why the appellant is entitled to the relief prayed for in his bill of complaint. The contract in question by its terms, requires, that the appellee furnish the appellant, and abstract showing a good merchantable title in the appellee to the Calhoun county land, which the appellant was to take subject to the \$10800.00 encumbrance referred to. The abstract furnished, does not show such a title; but shows several matters in the chain of title which detrimentally affect its merchantability; the only one necessary to point out, is a mortgage encumbrance of \$8800.00 which appears to have been placed upon the land by appellee's grantor October 1, 1919. This mortgage was made to the Farmers State Bank of Pittsfield. No release of the mortgage is shown by the abstract; and apparently it is still a lien upon the land. We conclude therefore that this trade should be rescinded; and that the contract made to effectuate it and the endorsement and transfer of the \$15000.00 note, and the deed conveyance of the Calhoun county land, which is still held in escrow, should be cancelled and set aside; also, that the judgment rendered against appellant is erroneous. And in this view of the controversy, it is unnecessary to consider, or pass upon, the other questions raised in the case relating to the premature commencement of the assumpsit suit.

For the reasons stated, judgment is reversed; and the decree dismissing the bill for want of equity is reversed; and the cause is remanded with directions to enter a decree canceling the contract; and canceling appellant's endorsement on the note, and the assignment of the mortgage; also the deed of conveyance of the Calhoun county land, in accordance with the prayer of the bill of complaint.

Reversed and remanded with directions.

Harold C. Wilber,
Appellant

vs.

Estate of Lewis Wilber,
Appellee

240 I.A. 680

Appeal from the Circuit Court
of Vermilion County.

Crow, J.

Lewis Wilber was appointed guardian for Harold C. Wilber, his son, October 14, 1904. Harold was then eleven years old, and the only child by first marriage. Lewis was the executor of the estate of James B. Courtney, grandfather of Harold. In October 1906 he filed his final report as executor, therein charging himself with \$389 as guardian as part of the distributive share of Harold. Later he charged himself with \$16.10 as guardian as an additional distributive share of said estate. In February 1908 he filed his inventory in the County Court charging himself with the total sum of \$405.10.

The guardian died in November, 1922 and a few days later an administrator of his estate was appointed. In May 1923, Harold Wilber filed a claim in the Probate Court against the estate. The items of the claim are: November 17, 1906- Amount received by the deceased Lewis Wilber as guardian of Harold C. Wilber from the estate of James B. Courtney, deceased, \$405.10. Interest on the amount for 16 years at 6 per cent per annum, \$388.89. June 30, 1913, Received by deceased Lewis Wilber, from Patomac Building and Loan Association, funds of Harold C. Wilber, \$600. Interest on above amount for 9-1/2 years at 6 per cent per annum, \$342. Total amount of claim, \$1,735.99.

The cause was heard in the Probate Court where a judgment was rendered in favor of the claimant for the full amount of the claim. From that judgment an appeal was taken to the Circuit Court, and on trial by jury a verdict was returned for the administrator, upon which judgment was rendered. To reverse that judgment the record is brought to this Court.

by appeal.

Without going into a minute discussion of the evidence, it shows that the corpus of the funds in the hands of the guardian for his ward, the appellant, was the sum of \$405.10 received from the appellant's grandfather. There is no evidence in the rather voluminous record that the guardian received any other amount for the ward from any source, unless certain money invested in building and loan stock was so received. But the evidence shows that whatever money was received from such stock was put into the association from which it was derived by the guardian. The conclusion is irresistible that all the money except that sum was the money of the guardian. No other source is suggested. The total claim of appellant against the estate was \$1,735.99. As itemized in the claim presented, the claim consists of four items: \$405.10 received November 17, 1906 and interest on that sum for 16 years at six per cent per annum; \$388.89; June 30, 1913, amount received by Lewis Wilber deceased guardian from Potomac Building and Loan Association, funds of Harold C. Wilber, \$600; interest on "Above amount" for nine and one half years at six per cent per annum, \$342, total amount of claim being \$1,735.99. The affidavit of claimant is that the claim against the estate of his father as itemized "is just and unpaid after allowing all just credits".

The statement of the justness of the claim is, of course, a mere conclusion of the claimant as is also the statement it is unpaid. The evidence of the trial fills about one hundred and twenty pages of the transcript of the record and about the same number of pages of the printed abstract. We do not consider it important to set out in detail the evidence leading to the conclusion we reach for it would extend this opinion to an unnecessary length and serve no useful purpose.

Examining the record embracing this controversy, we are again impressed with the conviction that courts are not, and ought not be, machines governed exclusively by fixed rules,

without discretion in their application. There is no basis for doubt as to the claimant having received from his father and guardian money and the benefit of the expenditure of money for in excess of the pittance received by him as guardian, and in excess of the interest claimed. Claimant was entitled to only \$405.10 from his grandfather's estate. Lewis Silber could make no final settlement of the Courtney estate until some one was appointed guardian to whom should be paid the amount due Harold. To close it up, no doubt, judged by common knowledge of such affairs, he was appointed guardian October 14, 1904, and in his report charged himself as such with two items aggregating \$405.10 and crediting his account as executor with like amount. The executorship was thereby closed and from that he was relieved of further responsibility. His report of distribution as executor was made November 17, 1905. His inventory as guardian was filed February 25, 1905.

In view of the contention of appellant with regard to the building and loan stock, it is material to ascertain its origin. As in all such stock it was part of a series. J.B. Payne, who was secretary of the association when the stock was issued, testified it was issued between April 1 and October 1, 1904. The certificate was dated April 1, and the next series began October 1. But of course the date of issue would influence the maturity of it. Whether that be true or not it shows that claimant's father was diligent in the protection of his rights. Before the settlement of the estate from which excellent claims, stock had been bought by the guardian and was afterward paid by him to maturity. The petition for the appointment of Lewis Silber as guardian for Harold was filed about October 10, 1904. It was stated therein that the personal estate of the ward was "of the value of about \$500". Claimant charged interest on all the sums alleged to have been in the hands of his father but gave no credit for the large amount of money generously paid by him for his son's benefit.

For appellant it is contended that if the father made a gift to the son he could not afterward change it and charge the son, his ward, with the amount as payments. This reference is probably to the first investment in building and loan stock. The first certificate for \$600 in the building and loan association was taken out by Lewis Wilber between April 1 and October 1, 1904. The certificate was taken at a time when Mr. Wilber knew he would have something to invest for his son, and about which time he was appointed guardian. He made all payments on the stock. There can be no valid claim that the guardian concealed anything. Equitably there is as much reason for saying the investment was made in anticipation of the receipt of his ward's funds, they being actually in his hands, as for saying it was an unchangeable gift. Indeed, the conclusion is fully warranted by the large amount of money spent for the claimant in other shares of stock and for necessary purposes before and after he reached his majority. Whether as father or as guardian, accounts were kept and he was not niggardly with his only son. Yet for none of these does he take allowance by way of credit while charging full amounts for interest. Not only did the father give him checks in generous sums, but, no doubt by consent, he drew checks as shown by the evidence, against his father's account, following the name signed to the checks with his initials. Most of the money to acquire a thousand dollar share of building and loan stock was paid by the father and the share in the ward's name was assigned to his wife. He and one dependent on him received money therefor, which in equity and conscience he has no right to demand shall be paid again to him. The record is replete with evidence corroborating the testimony of the widow that he had received all that belonged to him, as he stated to her.

The evidence shows large sums were paid to him after he arrived at majority. Notes were paid for him, while in business, for which presumably he received a benefit. At all events, he would be bound to account for the sums so paid for him. Probate Courts and the Circuit Court sitting on a reel from

their orders in such matters are guided by equitable principles as shown by all the authorities and it is needless to cite them. A careful consideration of the evidence in this case satisfies us the verdict of the jury and judgment of the Circuit Court were right. It may be some errors were committed in ruling at the trial. But they were not of a character to warrant a reversal of the judgment, it being clearly right. For this reason the alleged errors are not more particularly noticed. The judgment of the Circuit Court is affirmed.

Affirmed.

5014a

GEN. NO.7855

APRIL TERM, A.D.1925.

AGENDA NO.56

D. T. Black,

Appellee

vs.

Lincoln Mutual Casualty
Company of Springfield.

Appeal from the County Court
of Clark County.

b fol

240 I.A. 680

Crow, J.

The action was by appellee for loss of a Ford sedan car by theft, alleged to have been insured by appellant insurance company. There was a verdict and judgment for appellee and appellant brings the record to this Court for review.

There is no controversy as to the facts. Appellant states them elaborately and appellee admits in the brief filed that they are correctly stated and for that reason makes no statement of facts.

Substantially, the conceded facts are that Lincoln Mutual Casualty Company, incorporated, issued its policy of insurance against loss by fire and theft upon a Dodge automobile belonging to Black, residing at Marshall, in the sum of \$1000, March 19, 1920, for a period of three years. The application was procured and sent to the Company by George Adams, a local agent residing at Marshall. Black sold the Dodge car in June following, and had the insurance transferred to a Ford sedan purchased by him. This transfer was effected through Adams, upon a new application, the policy being dated June 19, 1920, for the same amount and on the same terms as in the former policy. Afterward, about the middle of July, 1922, Black sold his Ford sedan and bought a new one. He gave the policy to Adams to have the insurance transferred to the new car. Adams promised to have the change made, but failed to do so. He claimed he had sent it to Roland Lintherman, a former district agent for appellant in Illinois and embracing the territory in which the

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automobile was situated. Adams had formerly transacted his business through Lintherman, but at the time the policy was last delivered to Adams neither he nor Lintherman were connected with the company, the license of Adams having been canceled in August 1921. Lintherman returned the policy on the first Ford sedan to Adams, who had gone to Cary, Indiana. The next day Black notified Adams the new car, the second Ford sedan, had been stolen. The first Ford car bore engine number 3,962,459; the second, engine number 6,237,036. The policy number on the first was 25,364, and was never changed.

After the theft, notice having been sent to appellant company of the loss, it denied liability. Black did not look at his policy when he received it after it had been sent to Adams to be changed. If he had, he would have known he had no policy on his last car. The declaration consisted of a special count and the common counts. The special count, averring the insurance of the first Ford car, giving its number and its policy number as above, and the theft of the second car, averred that after the purchase of the new car the policy on the first was delivered to Adams "former agent of defendant" to have the insurance changed and transferred to cover a new Ford sedan with engine number 6,237,063 which plaintiff had purchased, and desired to have covered by insurance for the sum of \$1000 against loss by fire and theft and that said Adams took the policy on or about the 20th day of July, 1922 and promised plaintiff to have the same transferred to the new Ford sedan but that he refused and neglected to do so "and that it was stolen on September 4, 1922; and he being then under the belief the defendant was insuring the said car against fire and theft, and that said automobile has never been restored to the plaintiff by defendant, and that they had not paid, and refused to pay him for the value thereof to his damage in the sum of \$1000 etc".

To the declaration defendant pleaded the general

issue, the statute of frauds and denying the agency of George Adams and of Roland Lintheman at the time the policy was delivered to them for change; and denying notice to defendant of the change of cars or supposed transfer of insurance from the first to the latter Ford car. The foregoing statement is taken substantially from the brief for appellant for the reason it is conceded by counsel for appellee to be correct.

The entire record has been carefully examined. Seventeen errors have been assigned on the record and, while we are of the opinion nearly all are well assigned, we are further of the opinion only one question need be considered in the disposition of the case. We allow counsel for appellee to state that question as he does in the first sentence of his brief: "The question involved in this case is the right of an assured to recover damages for the loss by theft of an automobile which the assured thought was insured at the time the car was stolen". While it is not strictly accurate, it is sufficiently so. The inaccuracy consists in the assumption plaintiff was "an assured". The evidence fails to show he was insured. It shows conclusively that, as a reasonably prudent man he could not have supposed, or thought, he was insured. Pleas filed, among others, denied the agency and thereupon it was incumbent on plaintiff to prove it by competent evidence. This was not done. A mass of incompetent evidence was allowed to go to the jury on this point over the objection of defendant. All the evidence in the record shows neither Adams nor Lintheman was an agent of defendant at the time of the purchase of the last Ford car. Neither did they pretend to insure the car as agent of defendant company.

There is no theory presented by the record upon which plaintiff can recover from defendant. The error assigned by appellant challenging the refusal of the Court to direct a verdict is well assigned. It admits every fact proved and every integral fact the evidence tends to prove. The Court

should have directed a verdict for defendant and for the error in not so doing the judgment is reversed without remandment.

Reversed.



General No. 7892

STYLER TERM, A.D. 1925.

Agenda No. 3.

The People of the State of
Illinois

Defendants in Error

Error to the County

vs.

Court of

Tony Brush

Plaintiff in Error

Christian County.

240 I.A. 680

Grow, J.

Plaintiff in error having been convicted of violation of the Prohibition Act of the State of Illinois, brings the record here asking a reversal of the judgment of conviction. We have read the abstract of the record and the briefs and arguments of the respective counsel.

Two points only are made in the brief for plaintiff in error- 1. That the information upon which Brush was tried was too indefinite and uncertain to support a judgment that he might afterward wish to plead as a bar to subsequent prosecution for the same offense. We think the information sufficiently certain to support the judgment rendered.

2. The second contention is that the witnesses testified to the intoxicating quality of the stuff sold and that it did not appear they had any knowledge of the matter about which they testified. It does not require an expert to determine whether a given liquid or liquor is intoxicating. If one knows what intoxication is, and having tested the liquor under investigation and knows and testifies it intoxicates him, he is competent and if the jury believes him it is sufficient to warrant a conviction if the belief thereby generated was beyond a reasonable doubt, with such proof as to all the other elements of the crime. We cannot say the evidence was insufficient to establish the offense beyond a reasonable doubt.

These being the only points made in the brief, we will not under rule 23 of this Court consider any other question. The judgment of the County Court of Christian County is affirmed.

Affirmed.

Passing on petition for rehearing, we call attention to Rule 23 of this Court.

Rule 23 of the Rules of Practice of this Court, inter alia, provides: "Each party shall file a printed brief in the cause, x x x Following the statement of the case the brief shall conclude with the points made and the authorities relied upon in support of them; x x x No alleged error or point not contained in such brief shall be raised afterwards, either by reply brief, or in oral or printed argument or on petition for rehearing. x x x The brief of any party may be followed by an argument in support of such brief, which shall be distinct therefrom, but may be bound with the same. The argument shall be confined to discussion and elaboration of the points contained in the brief."

On petition for rehearing, for the first time misjoinder of counts in the information upon which plaintiff in error was convicted, is urged. That point was not presented in the brief upon which the cause was taken and decided. If it had been it would have received the consideration to which it was entitled. The point now presented is not for a rehearing but is a petition for a hearing and decision upon a point presented for the first time. The application is in violation of the rule and will not be considered. As to the second point, upon the evidence, we find no occasion to recede from what was said in the original opinion.

The petition for rehearing is denied.

5015a

GEN. NO. 7903.

OCTOBER TERM, A.D. 1925.

AGENDA NO. 11.

The People of the State of
Illinois

Defendant in Error

vs.

Frances Brouay,

Plaintiff in Error

Error to the County
Court of Christian
County.

240 I.A. 681

Crow, J.

Plaintiff in error was prosecuted by information
in the County Court of Christian County for violation of the
State Prohibition Law. The information charged in one count

"that Frances Brouay late of said County, on the Twenty-fifth day of November in the year of our Lord one thousand nine hundred and Twenty-three, at and within said County of Christian, in the State of Illinois, aforesaid, did unlawfully have and possess intoxicating liquor intended for use by sale, for beverage purposes, in violation of the Illinois Prohibition Act, she the said Frances Brouay not having any permit from the Attorney General of the State of Illinois to possess said intoxicating liquor aforesaid, or permit from the government of the United States of America, or the said intoxicating liquor aforesaid not being lawfully acquired and was not for use only for the personal consumption of the said Frances Brouay and her family residing in her private dwelling, while the same was occupied and used by her as her dwelling only, said possession of said intoxicating liquor aforesaid by the said Frances Brouay not being authorized under the Illinois Prohibition Act to so possess said intoxicating liquor, said liquor not being possessed for medical or sacramental purposes and not prescribed by a physician, and without any authority of whatsoever, to possess said intoxicating liquor was then and there prohibited and unlawfully ***"

A motion to quash the information was filed and overruled. No error in that regard is urged here. On trial by jury plaintiff in error was found guilty, Motions for new trial and in arrest of judgment being overruled, she was adjudged to pay a fine of four hundred dollars and costs and to stand committed to the County jail until the fine and costs were paid, and in addition thereto, she was sentenced to confinement in the County jail for a term of ninety days. She brings the record to this Court by writ of error, assigning as grounds for reversal eleven errors. We consider it necessary to notice only two.

The first ground for reversal is that she was not in possession of the liquor charged to have been in her possession. She resided with her parents. She had two small children. There is not a scintilla of evidence in the record that the liquor was in her possession any more than it was in the possession of her mother who was sick, or of her father who was in the yard at the time the liquor was found. She testified, and in that she is corroborated by her mother, that the liquor was alcohol given to her mother by a daughter who was a nurse in Chicago. The husband of one of her daughters is a physician. That it was used to rub her mother's limbs when she was suffering from pain. She had used it when in the hospital. It was kept upstairs because the mother was afraid the little children might get hold of it. The "up-stairs" room had no floor but had some boards laid on the joists, or as the witnesses said, on the rafters. The place was reached by stairs. On the day the liquor was found a deputy sheriff and some police officers of Pana went to the house and entered it. They testified they were making a raid and after they got into the house they heard glass break and some of them went upstairs. They found some liquor on the boards and one of them with a handkerchief mopped up and squeezed into a bottle a half pint of the liquor. One of the officers testified defendant was "hiding behind the chimney" which extended through the attic. Others testified she was standing by the chimney, one saying she was not concealed.

It was agreed at the trial that the contents of the bottle said to contain the liquor, and which was present at the trial, was shown by analysis to contain forty-seven per cent of alcohol by volume. It was dark in color. Part of it was "mopped up" as stated above and part ran through between the planks in the attic floor and was caught in a pan by one of the raiders. Defendant testified it was clear and that the dirt on the floor gave it the dark color. The officers testified it was mule.

The first of these is the fact that the United States is a young nation, and that its history is a history of growth and development. It is a history of the struggle for independence, of the struggle for the right to self-government, and of the struggle for the right to the fruits of the American dream. It is a history of the great men and women who have shaped the nation, and of the great events and events that have shaped the nation. It is a history of the United States of America, and of the people who have made it what it is today.

The second of these is the fact that the United States is a nation of immigrants. It is a nation of people who have come from all over the world, and who have brought with them their own cultures, languages, and customs. It is a nation of people who have worked hard to build a new life for themselves, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The third of these is the fact that the United States is a nation of freedom. It is a nation of people who have fought for the right to freedom of speech, of religion, and of the press. It is a nation of people who have fought for the right to the fruits of the American dream, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The fourth of these is the fact that the United States is a nation of progress. It is a nation of people who have worked hard to build a new life for themselves, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The fifth of these is the fact that the United States is a nation of peace. It is a nation of people who have fought for the right to peace, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The sixth of these is the fact that the United States is a nation of justice. It is a nation of people who have fought for the right to justice, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The seventh of these is the fact that the United States is a nation of love. It is a nation of people who have fought for the right to love, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The eighth of these is the fact that the United States is a nation of hope. It is a nation of people who have fought for the right to hope, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The ninth of these is the fact that the United States is a nation of faith. It is a nation of people who have fought for the right to faith, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The tenth of these is the fact that the United States is a nation of courage. It is a nation of people who have fought for the right to courage, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The eleventh of these is the fact that the United States is a nation of strength. It is a nation of people who have fought for the right to strength, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The twelfth of these is the fact that the United States is a nation of wisdom. It is a nation of people who have fought for the right to wisdom, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The thirteenth of these is the fact that the United States is a nation of compassion. It is a nation of people who have fought for the right to compassion, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The fourteenth of these is the fact that the United States is a nation of kindness. It is a nation of people who have fought for the right to kindness, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The fifteenth of these is the fact that the United States is a nation of generosity. It is a nation of people who have fought for the right to generosity, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The sixteenth of these is the fact that the United States is a nation of humility. It is a nation of people who have fought for the right to humility, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The seventeenth of these is the fact that the United States is a nation of patience. It is a nation of people who have fought for the right to patience, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The eighteenth of these is the fact that the United States is a nation of perseverance. It is a nation of people who have fought for the right to perseverance, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The nineteenth of these is the fact that the United States is a nation of determination. It is a nation of people who have fought for the right to determination, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

The twentieth of these is the fact that the United States is a nation of courage. It is a nation of people who have fought for the right to courage, and who have made the United States what it is today. It is a history of the United States of America, and of the people who have made it what it is today.

No one testified that the liquid found and which some of the witnesses testified before the jury was made, was fit for beverage purposes. The only evidence in the record with regard to the use of it shows it was used by external application for medicinal purposes. No evidence is in the record showing she had it in her possession for sale for beverage purposes or that it was fit for beverage purposes. This law, like every other, must be enforced. But no one can be, or ought to be, adjudged guilty upon suspicion howsoever grave or strong it may be. In the face of the positive uncontradicted evidence that it was used for medicinal purposes, a jury cannot conjecture, and no court can legally find, a guilt, possession, unless there is evidence sufficient to show the fact beyond a reasonable doubt.

Upon this condition of the record, the Court gave to the jury the following instruction at the request of the prosecution:

"The court instructs the jury that the statute of the State of Illinois provides that the possession of intoxicating liquor by any person not legally permitted to possess intoxicating liquor, shall be prima facie evidence that such liquor is kept for the purpose of being bartered, furnished, or otherwise disposed of in violation of law; it shall not be unlawful to possess intoxicating liquor in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such intoxicating liquor was lawfully acquired and is for the use only of the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein, but the burden of proof shall be upon possessor of any intoxicating liquor, in any action concerning the same, to prove that such liquor was lawfully acquired, possessed and used".

The vice of the instruction is emphasized by the fact that the only evidence as to the use of the liquor shows it was not unlawful. The evil to be suppressed by the legislation, National and State, is drunkenness and the evils it entails. If alcohol in its different forms had been used only for medicinal purposes the debate among the medical profession might have reached only the stage of more or less animated discussion as to its utility as a therapeutic agent. But this instruction

begins with an assumption that the liquor found, whatever it was, to whatever use it was to be devoted and from whatever source it was derived, was in the possession of one "not legally permitted to possess it", and then told the jury that the possession was "evidence that such liquor is kept for the purpose of being bartered, furnished or otherwise disposed of in violation of law". The word prime facie means nothing to a jury generally. Some jurors understand it but juries generally, it is believed, know nothing of its real value as a term measuring the probative value of evidence. The statutory rule of evidence is applicable only for the purpose of fixing the burden of proof as to intention or purpose of possession. Fault cannot be found with it. If one has undoubted possession of intoxicating liquor within the statutory definition, it is no hardship on him to be required to account for the possession. But before the statutory evidence rule is applicable, it must be shown by the prosecution that the defendant possessed intoxicating liquor as defined. It cannot be applied until the prosecution has shown a case by evidence, if uncontradicted, sufficient to make it appear the liquor was alcohol, or other liquor mentioned, containing one half of one per centum or more of alcohol by volume, and then show such liquor is fit for use for beverage purposes. Until such proof is made, there is nothing prima facie to apply against the person charged. After it is made, and defendant accounts for the possession, it no longer applies. *People v. Tate*, 316 Ill. 59, applies the principle. It is not now. *Johnson v. Pendergast*, 308 Ill. 255; *People v. Brinnegar*, 7625, October Term 1923 of this Court. As a further ground for reversal, the penalty imposed is beyond that authorized by the Statute. For this offense fine and imprisonment cannot be imposed. Both were imposed.

For the reasons assigned the judgment of the County Court is reversed and the case remanded.

Reversed and Remanded.

Town of Prairieton,

Appellee,

vs.

Frank Wooters,

Appellant,

Appeal from the Circuit Court
of Christian County.

240 I.A. 681

Crow, J.

A complaint was filed before a Justice of the Peace charging appellant with having ^{he} constructed a public highway in violation of the statute. The Justice found him guilty and assessed a fine against him and he appealed to the Circuit Court. The cause was heard by the Court, a jury being waived. He was again found guilty and a fine of three dollars and costs was assessed against him. He brings the record to this Court by appeal, alleging as errors that the Court admitted improper evidence; refused to admit proper evidence; refused to hold certain propositions of law and modifying others asked by appellant; in finding appellant guilty and rendering judgment against him for the fine and costs.

It is not the matter of the fine that brings the cause here, his counsel says, but the important question is, whether there was, in fact, a public highway. It is contended there was no legal proceeding laying out the highway. That being true the only question remaining is, was there a way by prescription?

In January, 1900, a petition was presented to the Commissioners of Highways of the Town Prairieton praying for the laying out of a road twenty feet wide on the township line, ten feet of which road was to be on each side of the line. The property was owned by six persons. The petition was signed by sixteen petitioners. On the tenth of February, 1900, a meeting of the commissioners of Highways was held and they decided to grant the prayer of the petition. On the same day the owners of the land on which the road was sought to be paid out, except one, signed a release of all claims for damages sustained by

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reason of the laying out and opening of the road through the lands. So far as the record discloses no further proceedings were had with regard to laying out the road. None was therefore established by the highway authorities.

We have not read the transcript of the record to ascertain the evidence in unabridged form. We have read the abstract filed by appellant and the additional abstract filed by appellee. It is clear from reading both abstracts that for more than twenty years a traveled way has existed running east and west and turning north. It was used to get to timber land, a slaughter house and a mill and was used by different persons to get to homes along and near to the line of the road. It is equally clear that during all of that time gates of plank or wire have been placed across the roadway and more or less constantly maintained. Part of the time they remained across it for some time and would then be taken down and uninterrupted travel permitted for a while. There has not been a continuous traveled way on a fixed line. The traveled way moved from one side to another. Part of the time a wash or ditch was in the road and people traveling there went on one side or the other. During all that time there has been no claim of right in the supposed way by anyone adversely, continuously and uninterruptedly. Any claim of a right of way has been in subordination to the rights and claims of some one along the route claimed as a highway. Such right to travel was always permission. Those who used it were notified that if they did not keep the gate across it closed it would be locked. It was locked.

We are according the trial court all the advantage of seeing and hearing the witnesses and observing their demeanor while testifying. But, having done so, we are unable to avoid the conclusion arrived at from the abstracts of the record, and applying the elementary rules of law to the facts, that there was no established road as charged in the complaint. The defendant should have been discharged.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

RECEIVED JANUARY 10, 1955
FROM THE UNIVERSITY OF CHICAGO

REPORT OF THE RESEARCH GROUP
ON THE CHEMISTRY OF THE
ATMOSPHERE
FOR THE YEAR 1954
BY
J. H. SEARS, JR.
AND
J. H. SEARS, JR.
CHICAGO, ILLINOIS
1955

CONTENTS
I. INTRODUCTION
II. THE CHEMISTRY OF THE ATMOSPHERE
A. THE CHEMISTRY OF THE STRATOSPHERE
B. THE CHEMISTRY OF THE TROPOSPHERE
C. THE CHEMISTRY OF THE MESOSPHERE
D. THE CHEMISTRY OF THE THERMOSPHERE

III. THE CHEMISTRY OF THE ATMOSPHERE
A. THE CHEMISTRY OF THE STRATOSPHERE
B. THE CHEMISTRY OF THE TROPOSPHERE
C. THE CHEMISTRY OF THE MESOSPHERE
D. THE CHEMISTRY OF THE THERMOSPHERE

IV. THE CHEMISTRY OF THE ATMOSPHERE
A. THE CHEMISTRY OF THE STRATOSPHERE
B. THE CHEMISTRY OF THE TROPOSPHERE
C. THE CHEMISTRY OF THE MESOSPHERE
D. THE CHEMISTRY OF THE THERMOSPHERE

The judgment of the Circuit Court of Christian County
is reversed.

Reversed.

The First National Bank of
Monticello,

Appellant,

v.

John W. Dubson,

Appellee.

240 I.A. 681

Appeal from the

Circuit Court of Piatt
County.

Crow, J.

Appellant recovered a judgment by confession against appellee in vacation, September 26, 1923, for the sum of \$770.95 including \$70 as attorney's fee for plaintiff's attorney. The note was in the usual form of judgment note, with power of attorney authorizing any attorney of any court of record to appear for the maker in such court in term time or vacation at any time after the execution of the note, and confess judgment, without process in favor of the holder of it for such amount as may appear unpaid thereon, with costs, and to waive and release errors intervening in such proceedings, and to consent to immediate execution upon the judgment. It was payable to Ross Churchill and endorsed by him and delivered to appellant. An affidavit was filed with the declaration and cognovit, stating that affiant was acquainted with the handwriting of Dubson and that the signature to the note and power of attorney was the genuine signature of the said Dubson and that there was due thereon the sum of \$700.95, including principal and interest and not including \$70, a reasonable attorney's fee; that Dubson was then alive. At the October term of the Court next following certain proceedings were had and orders entered from which an appeal was prosecuted to this Court and the appeal dismissed for the reason no final judgment had been entered. That was the only question then before us requiring disposition. On remandment, the record as now presented was completed, and the plaintiff appeals assigning four errors which will be noticed so far as necessary to a decision of the case.

At the October term of the Court following the entry of the judgment, as shown by the abstract, leave was granted to defendant to plead to the merits and execution was stayed. Leave was granted to plaintiff to file an amended declaration but none was filed. October 24, 1923, leave was asked to file the original note nunc pro tunc. January 3, 1924, being a day of the October term, 1923, defendant's motion to vacate the judgment was allowed, and thereupon defendant withdrew his motion for leave to plead and for order staying execution. At the same time the motion previously made by plaintiff for leave to file the note nunc pro tunc, as of September 23, 1923, was allowed. For some reason not explained and to us inconceivable, plaintiff offered in evidence a real estate mortgage given by Dubson and wife to T. W. Doss. The transcript recites that to this offer defendant excepted. The motion of defendant Dubson to quash the execution issued on the judgment was overruled, and stay of execution was allowed pending appeal to this Court. Plaintiff at the same time presented a motion to vacate the order vacating the judgment and quashing the execution which the Court overruled. The Court then entered an order taxing all costs against the plaintiff. A further order was entered that the judgment entered September 26, 1923, in favor of plaintiff and against defendant by confession be vacated and execution quashed.

The foregoing proceedings, as shown by the abstract, occurred before the appeal to this Court referred to. That appeal was dismissed because there had been no final judgment settling the right of plaintiff (appellant) to recover from the defendant (appellee). So far as the proceedings in the lower court were concerned, they were suspended until the mandate from this court authorized and directed them to go on.

At the June term, 1924, of the Circuit Court, the mandate having been filed, the plaintiff presented its motion for an order setting aside the stay of execution theretofore entered which was denied. Motion was then presented for

a rule on the defendant to file pleas to the declaration. This motion seems to have stood over until May 5, of the February term, 1925. On that day it was overruled and order entered vacating the judgment with a judgment against Plaintiff for costs. To review the proceedings of the Circuit Court this appeal is prosecuted. All proceedings in this case from its inception are open to review, the former appeal having concluded nothing.

The motion in the Circuit Court sought to have the judgment set aside, vacated and annulled and to quash the execution issued thereon. The grounds for that motion were: (1) The original note was not filed with the declaration and cognovit; (2) the copy of the note attached to the declaration disclosed it was payable to the order of Ross W. Churchill but does not show it was endorsed by him" and on the face of the record of said judgment the creditor is not the owner and holder of said note"; (3) \$70 attorney's fee was unlawfully included in the judgment; (4) the damage laid in the declaration was \$700.95 and the judgment being in excess of that amount "became void and is of no force and effect"; (5) the affidavit attached to the cognovit did not show by what authority or legal right he made the same.

The power of attorney to confess judgment was not a separate instrument but a part of the note. It immediately follows the note proper containing the promise to pay, and was signed in one place only, at the end of the power. The fact that it authorized a confession of judgment did not affect its negotiability. Negotiable Instrument Law, Section 5, Smith-Hurd's Statutes. The judgment debtor is in no better position, therefore, to interpose the defenses he attempts to make than if the note were payable directly to the bank which obtained the judgment sought to be vacated. On a motion to vacate a judgment confessed by authority and for leave to plead, the question is not whether the judgment should be set aside for errors of law, but whether there exists any equitable reason for opening

the judgment to let in a defense. Moyses v. Schenckorf, et al. 238 Ill. 232; (citing Knox v. Winstead Savings Bank, 57 Ill. 331; Mumford v. Tolman, 157 id. 258; Hall v. Jones, 32 id. 38; Pearce v. Miller, 201 id. 188; Rising v. Brainard, 36 id. 79; Cowden v. Besse 86 id. 159.) The principle controlling the exercise of equitable powers in the matter of judgments at law is, Courts of equity will not interfere to prevent the collection of a judgment, even though the judgment was rendered without service of process, unless a meritorious defense be shown. Reed v. New York Exchange Bank, 230 Ill. 50, (citing Colson v. Leitch, 110 id. 504). Further illustrating the strict principle in the Reed case it is said:

"It is not sufficient that a judgment is irregular, but it must be unjust, before equity will interfere. A showing on the bill for injunction that the judgment in question was obtained without process does not show, nor tend to show, that if process had been served and defense interposed, the result would have been different. In the case at bar, appellant alleges in his bill that the judgment complained of was obtained without service of process, and the Court, upon demurrer held, and we think properly, that this was not a sufficient showing of a valid defense to justify the intervention of equity. Everything in this bill might be true and still the judgment might have been by confession under a power of attorney contained in the note, waiving notice and service of process. In Chicago Fire Proofing Co. et al. v. Park National Bank, 145 Ill. 481, an application to vacate a judgment, it is said (Page 487):

'In an application of this character to vacate a judgment and for leave to plead, affidavits filed in support of the motion are to be construed most strongly against the party making the application. It is not sufficient to state facts from which, is proved on a trial, a defense might be inferred. Crossman v. Wohlleben, 90 Ill. 537. When the affidavits relied on in this case are tested by the rule indicated, it is apparent no case was made out by appellant.' "

Let this case be tested upon the facts by these authoritative principles. At the time the confessed judgment was entered an affidavit was attached to the narr, and cognovit upon which it was entered in substance following:

"William Dighton being duly sworn deposes and says he is acquainted with J.W.Dubson, the defendant, and that he is acquainted with his handwriting and that the signature to said note and power of attorney is the genuine signature of the said J.W.Dubson and that there is now due plaintiff from defendant after allowing all offsets and counter-claims, the sum of \$700.95, including principal, interest and not including \$70 a reasonable attorney's fee. That the consideration therefor was for value, and that the defendant, J.W.Dubson is living and that no part of said debt is for usurious interest.

This affidavit meets the requirements for a valid judgment as stated in Gardner v: Bunn et al., 132 Ill. 403. That case only held that a judgment by confession in vacation is void where no affidavit proving the execution of the power of attorney is filed when the judgment is rendered.

If it was material that the original note and power of attorney should be and remain attached to the declaration and cognovit, proof of the fact is in the record. The declaration and cognovit are dated and filed the same day as the judgment. Every presumption is indulged in favor of the proper discharge by an officer of his duty. But more pregnant is the proof of the fact by the conduct of defendant. He filed an affidavit in support of his motion to vacate the judgment. He does not deny the execution of the note and power. He does not say the original note was not attached to the declaration and cognovit. If he did not deliberately evade that issue, he did not meet it. It nowhere appears it was not filed. In his affidavit, in substance, he says he has examined the declaration upon which said judgments was rendered, and that "said note attached to said declaration is not the original note given by this affiant in said matter, but is only a copy of the same and so only purported to be". From this it does not appear and cannot be inferred, the original was not attached at the time the judgment was entered. The statute requires a copy of the note sued on in any action to be filed with it. So, support of that contention of appellee for vacating the judgment completely fails. It affords not a shadow of reason for vacating it. Appellee owes this debt nothing shows it to be unjust. If he can evade payment of it by the process displayed in the record before us, he must do so by the aid of a Court without any precedent therefor. If, as decided by the Supreme Court in the cases above quoted he could not be let in to defend even where no process was issued or served, a fortiori, may he not do so under the case made here. As we said when the case was previously here, it is anomalous to say to be let in to

plead in avoidance of a void judgment. He is not seeking to attack collaterally a void judgment, in which event no power would exist to modify it. The only question before us at the previous term was whether there was a final appealable judgment and that was the only question decided.

" Any person for a debt bona fide due may confess judgment by himself or attorney duly authorized, either in term time or vacation, without process. Judgments entered in vacation shall have like force and effect, and from the date thereof become liens in like manner and extent as judgments entered in term: Chapter 110, Section 88, Smith-Hurd's Statutes.

"Judgment shall not be arrested or stayed after verdict, nor shall any judgment *****upon confession, nil dicat or non sum informatus *****be reversed, impaired or in any way affected, by reason of any of the following imperfections, omissions, defects, matters or things in the process, pleadings, proceedings or records, namely: *****Fourth, For any variance between the original writ or process and the declaration, bill, plaint, or demand. *****Tenth, For any mistake ***** in any sum of money." Chap. 7, Sec. 6, Smith-Hurd's Statutes.

The judgment below being in excess of the ad damnum laid in the declaration it is contended by appellee it is void. Appellant contends that he should have leave to file nunc pro tunc an amended declaration to conform to the judgment. We think that might be proper if the fact were as appellant seems to contend, that he may have attorney's fees. But upon consideration of the power of attorney, we are of the opinion it did not authorize the attorney to confess judgment for any sum of money as attorney's fee for collection of the note. If it did, the clerk in vacation had no authority to enter a judgment therefor. The power certainly did not authorize a sum certain as attorney's fee to be entered, and it must, therefore, have rested in computation or ascertainment. The clerk possessed no such judicial powers. Campbell et al. v. Goddard, 117 Ill. 251. But aside from the fact the power is a blank on the subject of fees, it did not confer authority on any attorney to confess judgment therefor. It was authority authorizing the confession and judgment contemplated by the foregoing section. It was a standard

form, probably generally completed by filling the blank for the number of dollars as attorney's fee. We are of the opinion, and so hold, that no attorney's fee can properly be included in the judgment. In all other respects it is unassailable in this proceeding. Under the equitable powers of a court of law in such matters, as indicated by the Supreme Court in the Campbell case, supra, it has power to modify the judgment to conform to the warrant or power of attorney.

The disposition of the case calling for no further examination of the record, the judgment of the Circuit Court of Piatt County vacating the judgment below and rendering judgment for costs is reversed and the cause remanded to that Court with directions to modify with respect to the amount the said judgment entered in vacation so as to show a judgment rendered in favor of First National Bank of Monticello as of the 26th day of September, A.D.1923 for the sum of Seven Hundred Dollars and Ninety-Five Cents (\$700.95), against John W. Dubson. That Court is further directed to dismiss the proceedings instituted by John W. Dubson and to render judgment against him for all costs except those occasioned by and taxed at the October term, 1923 of the Circuit Court, and to award execution therefor. Judgment will be entered in this Court against appellee for all costs occasioned by this appeal.

Reversed.

Rebecca Jones.
Appellee

v.

Appeal from the Circuit Court of

Sangamon County.

Sangamon County.

Appellant.

240 I.A. 681

Crow, J.

This case is here on appeal, as it is said by appellant's counsel, from a decree rendered by the Circuit Court of Sangamon County against her and in favor of appellee. Much fault is found with the decree. Being curious to know the facts found and the terms of the decree entered, of which complaint is made, we examined the abstract. We fail to find it there, even in substance. The case was referred to the Master who took the evidence, as counsel says, but the Master does not say so. There is incorporated in the abstract findings of the Master. Objections to the report are incorporated also. But if there were exceptions to the report before the Court which were necessary they do not appear. The abstract refers us to the page of the transcript where the decree may be found but courts of review never go to the transcript to reverse, but may to affirm a decree.

The rules of this Court require an abstract of the record to be filed. This is necessary in order to have a review of any case brought here by appeal or error. It must be sufficiently full to present every matter necessary to ascertain whether error was committed by the trial Court. If such error does not appear from the abstract the decree or judgment will always be affirmed. This is on the principle that he who alleges error must make it appear. Among the great number of cases stating this rule, we refer to Gibling v. City of Mattoon, 167 Ill. 18; Phillips v. Benfield, 239 id. 139. In the latter case the Court say: "As the errors assigned upon the record are not made to appear by the abstract of the record filed in this case, the decree of the County Court is affirmed."

Under the condition of the abstract no error appears, and the decree of the Circuit Court is affirmed.

Frank Orr and Margaret
T. Yates, Executors,
etc.,

Appellees,

v.

Catherine Rush et al.

Appellants.

240 I.A. 681

Appeal from the

Circuit Court of

Pike County, Illinois.

Shurtleff, J.

This is an appeal from a decree of the Circuit Court of Pike County appointing a trustee and directing a trust fund in the estate of Ellen M. Orr, deceased. Ellen M. Orr died on January 28, 1924, leaving a last will and testament which has been probated and the executor and executrix, Frank Orr and Margaret T. Yates, named in the will have settled the estate. Under a part of the ninth clause of the will the testatrix provided as follows:

"To Cyrus Rush in trust one-sixth of the remainder of said part two and the net income thereof to be paid to his mother Catherine Rush, annually during her lifetime and at her death the principal and any remaining income not paid to her to be divided equally between Cyrus Rush, Anna R. Rush, Bertha M. Graham, children, and Eli Williams, grandson, of said Catherine Rush."

Catherine Rush, who takes a life interest in said fund, is a lady past ninety-two years of age, in very poor health, and was a sister of the testatrix in her lifetime. Cyrus Rush, named in said clause as trustee, died prior to the decease of Mrs. Orr. The fund in question amounts to \$11,761.10, which has been invested by the executors in Liberty bonds of the United States, fourth issue, drawing interest at the rate of 4½ per cent per annum, to which there will be added a further sum of fifteen

hundred dollars, making said trust fund upon complete distribution the sum of \$13,261.10. The executors filed their bill praying the appointment of a trustee to take over said fund, the trustee named in the will having died, and suggesting the appointment of the First National Bank of Pittsfield, which has a department engaged in the execution of trusts under the State and Federal law, and suggesting the continued investment of said funds in the Liberty bonds, as now invested, as a better and safer security. It appears that the executors had transacted all of the business of the estate with the First National Bank of Pittsfield. Catherine Rush answered the bill admitting the substantial and material allegations in it and prayed for the appointment of a trustee friendly to her, and a suitable person. It appears that Catherine Rush was desirous of the appointment of Fred H. Farrand, cashier of the Illinois Valley Bank of Griggsville, named in the decree as trustee. The appellants filed answer, requesting the appointment of the First National Bank of Pittsfield as suggested by the executors. Proofs were taken and it appears that Catherine Rush is living in California with a daughter Helen Rush, whom the testatrix mentioned in her will and about whom she stated: For personal reasons, which she considered just and reasonable, it was her will that Helen Rush have or take no part in her estate.

It further appears from the testimony of Fred H. Farrand that Catherine Rush has a life estate in about four hundred acres of land, of which the said Helen Rush is the owner of the remainder in fee, to the amount of three hundred twenty acres; that these lands have been mortgaged to the Federal Joint Stock Land Bank of Edwardsville for the sum of twenty thousand dollars, and that the said Farrand, for the benefit of the Illinois Valley Bank, has taken title to these lands for the advancement of about ten thousand dollars to pay the debts, taxes, etc. upon said lands, and the most of it, as Mr. Farrand testifies, to pay the upkeep

of Catherine Rush and her daughter (Helen). The witness further states that Catherine Rush is an invalid, practically without sight; that she has to be helped and that her daughter has taken care of her for the past seven years. The court by its decree ordered that a bond be given in the sum of eighteen thousand dollars; that said Fred H. Farrand be appointed trustee and that the trustee be permitted to invest the funds as in his discretion he may determine. It is shown that the rate of taxation upon personal property in the City of Pittsfield, where the First National Bank is located, is seven per cent of value. The rate of taxation in Griggsville is not furnished. There is no criticism made as to the settlement of the estate by the executors or the investment of the funds in Liberty bonds. There is no criticism made against the First National Bank or its qualifications to act as trustee. Catherine Rush asks for the appointment of a trustee friendly to her and a creditor. There is criticism and opposition to the trustee named and reasons urged why he should not be appointed. Helen Rush occupies a confidential relationship to her mother, Catherine Rush, and from the testimony it may be inferred that the trustee named is as much her selection as the selection of her mother.

"The appointment of a fit and proper person to be a new trustee is a matter largely within the discretion of the court. It is not, however, an arbitrary discretion, but is subject to well known and clearly defined rules. The court will always give due weight to the wishes of those chiefly interested, but will not be controlled by such wishes against considerations of fitness. Where beneficiaries fail to agree, the court should appoint a disinterested person not nominated by any of the parties. As a general rule, interested persons should not be appointed." 39 Cyc. 283.

"The court will have regard to the wishes of the persons by whom the trust has been created, if expressed in the instrument

creating the trust or clearly to be collected from it. The court will not appoint a person to be a trustee with a view to the interest of some and in opposition to that of others of the cestui que trustent; the court will have regard to the question whether the appointment of a proposed person will promote or impede the execution of the trust." 39 Cyc, 283 Note. And substantially the same rules are laid down in Yates v. Yates, 255 Ill. 72.

In this case, considering the age of the life tenant and her condition of health, the interest of the remaindermen is very much greater in quantity than the interest of the life tenant. It may be conceded, under all of the circumstances of this case, that it is of prime importance that Catherine Rush receive the income upon this fund and receive it promptly, but it cannot be conceded that that interest is to be accelerated by placing the fund in the hands of a creditor of Catherine Rush in preference to placing it with a disinterested trustee. If the wishes of the donor are to be consulted in any way, the petition and suggestions of the executors selected by her, and who have fully and completely executed their trust, is the best expression to be obtained of what the testatrix would do, if living. Under the testimony in this case the trustee appointed has such a relationship to the life tenant that he should not be appointed trustee of this fund, and it was error on the part of the court to appoint him. Error is assigned on the ground that the court did not decree that the funds remain and the inuring funds be invested in Liberty bonds at $4\frac{1}{2}$ per cent interest per annum. These funds were invested by the executors named by the testatrix. They are tax exempt. There is no testimony in the case that the funds can be safely invested at a higher rate in any other security. They are convertible into cash at any time. Certainly, it would not be a wise use of discretion in this case, either on the part of the court or a trustee, to convert these funds and reinvest them in term mortgage loans when the occasion

to divide the fund may arise at any time. "An investment in Government or State bonds seems to be uniformly regarded in all jurisdictions as a particularly safe and proper one for a trustee to make." 29 Cyc. 395. Especially is this true where the bonds are convertible into cash at any time and the period for distribution is in the near future and may occur at any time. In the opinion of this court the decree of the lower court should have provided that the funds now invested in Liberty bonds should remain during the term, as invested, and that the further funds to be added should be, in a like manner, invested in Liberty bonds drawing interest at the rate of $4\frac{1}{2}$ per cent per annum, and the decree should have further provided that the interest thereon be paid to the said Catherine Rush as said interest accrues, annually.

The suggestion of the appointment of the First National Bank of Pittsfield, as trustee, was made by the executors in their bill of complaint. The answer of the appellants states that the First National Bank of Pittsfield is a legal depository for such funds, is a safe, suitable and proper person to act as trustee, that its solvency and business management is unquestioned and the appellants join in the executors' prayer that this Bank be appointed trustee. This is not a suggestion by the appellants but an acquiescence in the suggestion of the executors.

That part of the decree of the Circuit Court of Pike County appointing Fred H. Farrand trustee is reversed and the cause remanded with directions to appoint a disinterested trustee and to provide in the decree that the funds on hand remain invested in Liberty bonds, as now invested, and that the additional funds be invested in Liberty bonds, drawing interest at the rate of $4\frac{1}{2}$ per cent per annum, the interest and income upon said funds to be paid to the said Catherine Rush as said interest and income accrues, annually. Otherwise, the decree should be affirmed.

Reversed in part, affirmed in part.

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Gen. No. 7907

OCTOBER TERM, 1925.

Agenda No. 15

W. W. Hiddle,

Appellant,

v.

Charles Watson and
Sam Springer,

Appellees.

240 I.A. 682

Appeal from the

Circuit Court of

Edgar County, Illinois.

Shurtleff, J.

Appellant brought his suit against appellees Watson and Springer in the Circuit Court of Edgar County to recover the sum of one thousand dollars, attorney fees and costs, claimed to have been paid by appellant to appellees upon the fraudulent sale of ten shares of the common stock in the Hoosier Rolling Mill Company, incorporated under the laws of Delaware and doing business at Terre Haute, Indiana, in violation of the Securities Act of the State of Illinois.

Appellant filed his special count and the common counts and tendered the stock back to appellees in court. Appellees presented the general issue. Appellee Watson resided in Edgar County and was served there. Appellee Springer was a resident of Cook County and service was had upon him in Cook County. The parties waived trial by jury and the cause was presented to the court and after hearing the proofs the court found a judgment for Appellee Watson on the merits of the issues, and Appellee Springer, having withdrawn his plea, a judgment was entered in favor of Appellee Springer on account of no service having been had upon him in said county and for want of jurisdiction, and appellant has brought the record to this court, by appeal, for review.

A number of questions pertaining to the law regulating the sale of securities are discussed by counsel in their respective briefs, but no propositions of law were submitted to the court, and from the record and the court's finding it is apparent that the case was decided upon the question of fact as to whether Appellee Watson was a solicitor, agent, broker, officer or director in the selling company, or in any manner aided or assisted in an unlawful sale of stock. Appellee Springer was a member of the brokerage firm of A. R. Morris and Company of Terre Haute, Indiana, and this firm had taken over a block of bonds and common stock of the Hoosier Rolling Mill Company for sale, of which the bonds were offered in Illinois, but Springer testified that none of the common stock was offered in Illinois and that all sales of stock, whenever made, were effected at Terre Haute, Indiana. The testimony showed that Appellee Springer, through a mutual friend, secured the aid of Appellee Watson to introduce him, Springer, to parties in Edgar County, in this State, and that Watson did ride with Springer and introduce him to appellant and some others. There is no testimony in the record that Appellee Watson was in any manner a solicitor, agent, broker, officer or director in either the Hoosier Rolling Mill Company or A. R. Morris and Company, or that he received any pay or reward for the service he rendered Springer, or that he received any commission or remuneration upon any sale made. Appellant testifies to various conversations with and statements made by the appellees in reference to said stock and bonds, but in each case appellant testifies "they said," without differentiating between the statements of the appellees separately. On the other hand, Appellee Watson testifies that he drove with Springer to appellant's farm, where appellant was "shucking" corn; that they went to the field and Watson introduced Springer to

whether Watson in any manner aided or assisted in said sale, assuming that it was a transaction governed by the laws of this State, upon which question we express no opinion, the trial court heard all of the witnesses and had them before him (except Appellee Springer) and was in a better position to determine the credibility to be accorded to the various witnesses than can be gleaned from the printed record, and we can not say, from reading the entire record in this case, that the judgment is manifestly against the weight of the evidence. The judgment of the Circuit Court of Edgar County, therefore, should be and is affirmed.

Affirmed.

February 23-1926

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Gen. No. 7913.

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1925.

Agenda No. 21.

Edna Hutchison,
Appellee,

v.
Levi Murray,
Appellant.

240 I.A. 682
Appeal from the
Circuit Court of
Christian County.

Shurtleff, J.

This is a suit over the sale of a garage, claimed to have been sold by appellee to appellant for the sum of one hundred dollars. In September, 1923, appellant, acting as agent for a Mrs. Tolliver, owner of a house and lot in Taylorville, entered into a verbal agreement with appellee to sell her the premises, and appellee paid one hundred dollars upon the purchase. Appellee asked permission to move into the place and to move a garage upon the premises before the contract of sale was signed by Mrs. Tolliver, who lived at Morrisonville. Appellant permitted appellee to move the garage upon the premises and it is shown by the testimony that the garage is sixteen feet square, constructed of one by ten ship lap with two by four posts and studding but has no floor, and, as appellee's testimony shows, sets on the ground and has no foundation; but appellant's witnesses testified that the corners set on concrete blocks and bricks set in the ground three inches, but the blocks and bricks were not laid in masonry.

Appellee lived upon the premises about six weeks and when appellant presented a contract, signed by Mrs. Tolliver, appellee concluded she could not go on with the contract and could not keep up her payments and, therefore, appellee did not sign the

contract and the sale of the premises to appellee was abandoned. Up to this time appellant had acted as agent for Mrs. Tolliver through a Mr. Diller, also living at Morrisonville, a relative of Mrs. Tolliver's. In January, 1924, the premises were conveyed by Mrs. Tolliver to Diller and in April, 1924, by Diller to appellant, and in December, 1924, appellant sold and conveyed the premises to one Conover.

There were proofs offered by appellee tending to show that after appellee abandoned her contract of purchase appellant gave her permission to move the garage off from the premises, and that appellee sold the garage to appellant for the sum of one hundred dollars, and that appellant promised to pay appellee that sum for the building. Appellee's proof further tends to show that after Diller purchased the premises he gave permission to appellee to move the garage from the lot. The garage remained on the lot while appellant was the owner of the premises and is still there.

The testimony is sharply conflicting. The jury found a verdict in favor of appellee in the sum of one hundred dollars which has been entered in judgment and appellant has appealed.

Appellant contends that, the garage being a part of the real estate and there being no contract in writing, the contract claimed to have been made by appellee for the sale of the garage is void. On the other hand, appellee contends that an article or structure moved upon or annexed to real estate, which may be removed without injury to the freehold, retains its character as personalty by agreement between the parties or consent of the land owner for its removal or sale separate from the realty, citing 26 Corpus Juris, 676; Hewitt v. General Electric Co. 164 Ill. 424; Sword v. Low, 122 Ill. 496; Ellison and Ellison v. Salem Coal Mining Co., 43 Ill. App. 120. The question of

intention on the part of the one making the annexation is of prime importance. In Sword v. Low, supra, the court held on page 496: "To determine the irremovable character of a fixture, three tests are, by the modern authorities, applied, viz: 'First, actual annexation to the realty, or something appurtenant thereto; second, application to the use or purpose to which that part of the realty with which it is connected is appropriated; and third, the intention of the parties making the annexation to make a permanent accession to the freehold.' Herrman on Chattel Mortgages, 6; Ewell on Fixtures, 21, 22; Tyler on Fixtures, 114; Washburn on Real Prop. 16.

"Mr. Ewell (page 22) says, that 'of these three tests the clear tendency of modern authority seems to give prominence to the question of intention to make the article a permanent accession to the freehold, and the others seem to derive their chief value as evidence of such intention.'

"Washburn (page 8) lays down the rule: 'It may be stated, in the first place, that whether a thing which may be a fixture becomes a part of the realty by annexing it, depends, as a general proposition, upon the intention with which it was done.'

Appellee never had a contract for the purchase of the premises. The verbal contract made with her by appellant was void and appellee could repudiate it at any time and did abandon it. Appellee had permission to move the garage upon the premises. An intention to improve the premises by a permanent structure when appellee had no right, title, interest or claim in or to the premises cannot be imputed to appellee. The issue was presented to the jury as to whether the garage could be reasonably removed without material injury to the premises or the garage. The issue was further submitted to the jury as to whether appellee had permission from the owner to remove the

garage; and finally, the issue was fairly presented to the jury as to whether appellant purchased the garage and promised to pay her one hundred dollars for the same, and upon all of these issues the jury has found a verdict in favor of appellee. We have examined the rulings upon the admission and rejection of testimony and the giving and the refusal of instructions, and read the record and find therein no error that would warrant a reversal of the judgment. The judgment of the Circuit Court of Christian County is, therefore, affirmed.

Affirmed.

502/a

Gen. No. 7916

OCTOBER TERM, 1925.

Agenda No. 24.

The People of the
State of Illinois,

Defendant in Error,

v.

James Yankowski,

Plaintiff in Error.

240 I.A. 682

Error to the

County Court of

Christian County.

Shurtleff, J.

Plaintiff in error was indicted by the grand jury of Christian County for unlawfully having in his possession intoxicating liquors intended for use, by sale, for beverage purposes. The indictment was certified to the County Court for trial and the cause submitted to a jury. The jury found a verdict of guilty, upon which a judgment has been entered and the court sentenced plaintiff in error to pay a fine of four hundred dollars, and in addition to be committed to the county jail for 120 days and the record is brought to this court by writ of error for review.

The record shows that the sheriff, with his deputies, went to the home of plaintiff in error in the forenoon of May 6, 1924, with a search warrant, and found plaintiff in error's wife in the basement washing. Plaintiff in error was not at home upon their arrival but was working upon a building about a block and a half away, and returned to his home while the officers were there. The officers testify that while they were in the basement the wife broke a half gallon jar of "mule" which had been in a pail covered with clothes, and the officers obtained four bottles of "brew" which were taken to the sheriff's office,

Mrs. Yankowski testified that the bottle which broke contained ammonia which she had been using in washing the clothes, and that in picking it up the bottle caught in her clothes and fell to the floor and was broken. There is no testimony that any of the bottles containing "brew" or the broken bottle contained any intoxicating liquor, except the statement of the officers that the broken bottle was "mule". The officers again returned to the premises about one o'clock and made another search and found nothing and returned to the sheriff's office. About two hours later, upon being called up by a woman who lived in the neighborhood and requested to make another search, the officers returned to the premises and searched the garage and finally in the toilet or privy somewhere on the premises, by lifting up the floor, which apparently was arranged in the manner of a trap door, they found two five gallon kegs, each containing "mule" and two one-half gallon jars of prunes saturated with "mule" which were taken to the sheriff's office and the defendant was arrested.

Plaintiff in error was indicted in December, 1924, and a few days before the trial in February, 1925, a sample from one of the kegs was examined by a chemist and the testimony shows that this sample contained fifty-three per cent in volume of alcohol. The kegs and bottles were kept in the sheriff's private office from May, 1924, to February, 1925, under lock and key, but all of the deputy sheriffs carried keys to the room. Plaintiff in error testified that he had no intoxicating liquors upon his premises, and that he never heard of or knew anything about the kegs and jars found in the privy. Plaintiff in error had lived upon these premises about four years, but testified that he did not build the privy but that "a fellow from Kincaid named Polaski built it." There is no testimony in the record as to the size of plaintiff in error's lot, whether it is a city lot of the usual and ordinary

size or a field or farm, or as to the location of the out building on the lot. There is no testimony showing or tending to show that plaintiff in error ever used the out house or was ever in it, except the inference to be drawn from the casual statement of the witnesses that it was found "on the premises." There is no testimony that any of the liquors were intoxicating except the sample taken from one of the kegs and examined about nine months after the kegs were taken. The August, 1924, term of the court passed over without any indictment having been found against plaintiff in error, and however much the jury may have been impressed with the guilt of the plaintiff in error by seeing and hearing the witnesses, the record before this court is extremely meager, if indeed sufficient, of facts proven to warrant a judgment of conviction against plaintiff in error. However, the judgment in this case will have to be reversed for the error in giving People's instruction number one. In this instruction the court informed the jury that: "the possession of intoxicating liquor shall be prima facie evidence that such liquor is kept for the purpose of being bartered, furnished or otherwise disposed of in violation of law," and in the same instruction the court further said: "but the burden of proof shall be upon the possessor of any intoxicating liquor in any action concerning the same, to prove that such liquor was lawfully acquired, possessed and used." This instruction did not state the law; is in direct contradiction of other instructions given for plaintiff in error and has been held reversible error. (People v. Tate, 316 Ill. 59.)

Some other criticisms are made upon instructions, but upon another trial doubtless these will be corrected. The court sentenced plaintiff in error to pay a fine and to be committed to the county jail for a term. This was error. Plaintiff in error

cannot be both fined and committed to the county jail for unlawfully possessing intoxicating liquor. He may be fined or committed.

For the errors appearing in the record as pointed out, the judgment of the County Court of Christian County is reversed and the cause remanded.

Reversed and Remanded.

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Gen. No. 7939

OCTOBER TERM, 1925

Agenda No. 27

Ada Stoner Chapin,
Defendant in Error,
v.
Banta Furniture Company,
a Corporation,
Plaintiff in Error.

240 I.A. 682

Writ of Error
to the Circuit
Court of Macon
County.

Shurtleff, J.

This is a suit in assumpsit by defendant in error against plaintiff in error, a corporation, to recover damages on a lease made between the parties extending from May 1, 1924, to the 30th day of April, 1933, at a monthly rental of three hundred dollars, payable on or before the first day of each month in advance.

The declaration charges that plaintiff in error entered into the possession of the premises and continued to occupy them from the first day of May, 1924, to the first day of September, 1924, and that on to wit, September 1, 1924, plaintiff in error vacated said premises and refused to pay the rent therefor and broke said lease and refused to comply with the same. It was provided in the lease that "if the rent above reserved, or any part thereof, shall be behind or unpaid, or if default shall be made in any of the covenants and agreements therein contained to be kept by the said party of the second part (plaintiff in error), it shall be lawful for the said party of the first part (defendant in error) at her election, to declare said term ended, and into the said premises, or any part thereof, to re-enter; and the said party of the second part, or any other person or persons occupying the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again repossess and enjoy, as in the first and former estate, and in such case, or in case of termination

of this lease in any way the parties of the second part covenant and agree to surrender," etc.

By another clause in the lease the second party waived its right to any notice from the party of the first part on her election to declare the lease at an end, under any of its provisions, of any demand for the payment of rent or the possession of the leased premises, and it was provided that the simple fact of the non-payment of rent reserved, or default in any of the covenants therein contained, should constitute a forcible detainer, as aforesaid.

There was a plea of non-assumpsit and two special pleas. Under the first plea plaintiff in error averred that the defendant in error should not recover a greater sum than three hundred dollars, because it says, "that after the execution of the lease defendant entered into possession and paid rent thereon until the first day of September, A.D. 1924, and being then unable to pay said rent, surrendered the possession of said premises to the plaintiff, and that thereafter, to wit, on the 5th day of September, the plaintiff served a notice in writing upon this defendant; that this defendant was in default in payment of rent and that unless the September month of installment of rent was paid by September 16th, 1924, that the plaintiff would declare the said lease broken and would proceed to re-enter the property in question and hold this defendant liable for damages, and that the plaintiff did thereafter, on the 7th day of October, A.D. 1924, institute this suit against the defendant to recover damages from the defendant on account of a breach of said lease, by reason whereof said lease became and was terminated by the acts of the plaintiff."

We shall speak of the defendant in error as plaintiff and the plaintiff in error as defendant

The second special plea set out substantially the same matter but incorporated a letter written by plaintiff to the defendant Banta Furniture Company under date of September 5, 1924, as follows:

"To Banta Furniture Company,
Decatur, Illinois.

Attention of Joseph H. Faith, Secretary.

Dear Sir: I beg to advise you that the keys to the premises belonging to me, held under lease by you, are still subject to your disposal, and your company is now in default in payment of rent, and unless this month's installment is paid by September 16, 1924, I will declare the contract broken and proceed to re-rent the property upon the best terms available, and hold your company and the guarantors upon the lease for any damages resulting from breach of your lease.

If you care to discuss matter of settlement and release upon this lease I would be willing to take the matter up with you at any time.

Very truly yours,

Ada Stoner Chapin,
Owner

By Frank A. Chapin,
Agent."

A demurrer was sustained to the two special pleas; a jury waived and the cause was submitted to the court. There was a finding for the plaintiff and judgment against defendant in the sum of \$8684.04, and plaintiff in error has sued out a writ of error.

By the proofs it appears that the defendant abandoned the premises and abandoned the lease and sent the keys to the building to the plaintiff by registered mail, and that plaintiff receipted for the keys in the following language: "Received from the postmaster the registered or insured article the original number of which appears on the face of this card. Received and will hold for Banta Furniture Company." It further appears that all of the defendants were dismissed out of the case except the Banta Furniture Company, a corporation.

It further appears that plaintiff wrote the letter set out in defendant's second special plea to the defendant under date of September 5, 1924, and that the plaintiff attempted to re-rent said premises, but not finding a suitable tenant, brought this suit

on October 7, 1924. On March 30, 1925, when the judgment was entered in this cause, the premises were still vacant, although plaintiff had made a reasonable effort to procure a tenant.

Defendant contends that the court erred in sustaining the demurrer to the special pleas and that the abandonment of the premises and the lease by the defendant and the acceptance of the keys, and the intention to re-rent as set forth in plaintiff's letter of September 5, 1924, amounted to a surrender of the lease by plaintiff, and that she can recover only for rents due upon the surrender, and the defendant cites cases where it has been held that the abandonment of the premises and the lease by the tenant and the re-entry of the landlord constitute a surrender and rescission of the contract so that further recoveries under the lease cannot be had. The question raised is, whether the facts cited in this case constitute a surrender on the part of the plaintiff. Neither by the receipt for the keys nor by the letter of September 5, 1924, did the plaintiff consent to a rescission of the lease nor a release of defendant's liability. The abandonment of the lease and the premises on the part of defendant was without any fault on the part of the plaintiff. In Marshall v. Grosse Clothing Co., 184 Ill. 424, the court held: "It is also claimed that after appellant abandoned the leased premises, acts of appellee in taking possession and renting a portion of the premises and in making alterations in the hallway and one of the rooms, constituted an eviction, and upon that ground appellee could not recover. There are two answers to this position. In the first place, the premises were abandoned by the appellant without the fault of appellee, and when such is the case the landlord may re-enter and re-rent the premises, crediting the former tenant with the proceeds, and his so taking possession does not relieve the tenant from liability for the

stipulated rent. (Humiston, Keeling & Co., v. Wheeler, 175 Ill. 514.)"

In Humiston, Keeling & Co. v. Wheeler, *supra*, it was held:

"In order to constitute an eviction the tenant must abandon the premises on account of the act of the landlord, and if defendant had already abandoned them, the entry by plaintiff would not constitute an eviction. In case of an abandonment without fault of the landlord, or as the result of his acts, he may re-enter and again rent the premises and credit the lessee with the proceeds, and his so taking possession does not relieve from the payment of rent. (12th Am. & Eng. Ency. of Law, 751; Wood on Landlord & Tenant, Sec. 477.)"

In West Side Auction Co. v. Conn. Ins. Co., 186 Ill. 161, the court said: "It is said, however, that after the surrender of the keys the lessor put up signs to rent the property, and that it cleaned out the building. Upon the abandonment of the leased premises by the tenant it was the right and the duty of the landlord to take charge of the premises, preserve them from injury, and, if it could, re-rent them, thus reducing the damages for which the lessee was liable." And the court further said:

"We find no competent evidence in this record legally tending to prove that there was a mutual agreement between the parties for the canceling of the lease, and there is no pretense of a right on the part of the lessee to surrender the premises and cancel the lease without the consent of the lessor."

The rule stated is substantially the same rule laid down in Bannister v. Read et al, 6 Ill. 100; Springer v. Chicago Real Estate Loan Co., 202 Ill. 26; 35 Corp. Jur. 1092 and 1093, and many other cases and authorities. On the abandonment of the lease by the tenant it is the duty of the landlord to re-enter the premises and re-rent the same for the benefit of the tenant and in abatement of damages that might be caused by the tenant's failure to perform. (West Side Auction Co. v. Conn. Ins. Co.,

supra; Humiston, Keeling & Co. v. Wheeler, supra; Hinde et al. v. Madansky et al, 161 Ill. App. 216; Resser v. Corwin, 72 Ill. App. 625; Underhill v. Collins, (N.Y.) 30 N.E. 577; Third Am. Law Rep. 1082; Oldfield v. Angeles Brewing & M. Co. (Wash.) 35 L. R. A. (N.S.) 426, and 36 Corp. Jur. 340.) The question seems to be a question of the intent on the part of the lessor and under all the circumstances and facts proven in this case there is nothing that tends to show that plaintiff in accepting the keys or in attempting to re-rent the premises at any time consented to a surrender of the lease or a release of defendant's liability, and the court committed no error in sustaining the demurrer to defendant's special pleas.

The defendant contends that under the law of this state the plaintiff should not be permitted to recover damages on the entire lease or future profits. Both parties to this suit cite L. S. & M. S. Ry. Co. v. Richards, 152 Ill. 59. In this case on page 80 the court held: "It is well settled that where one party repudiates the contract and refuses longer to be bound by it, the injured party has an election to pursue either of three remedies: He may treat the contract as rescinded, and recover upon quantum meruit so far as he has performed; or he may keep the contract alive for the benefit of both parties, being at all times himself ready and able to perform, and at the end of the time specified in the contract for performance, sue and recover, under the contract; or he may treat the repudiation as putting an end to the contract for all purposes of performance, and sue for the profits he would have realized if he had not been prevented from performing. In the latter case the contract would be continued in force for that purpose."

The court further held, page 89: "Without further quotation from cases, it seems clear, both upon principle and by authority, that where one party to an executory contract refuses to

THE FIRST PART OF THE HISTORY OF THE
LIFE OF THE LATE KING CHARLES THE FIRST
BY JOHN BURNET
IN TWO VOLUMES
THE FIRST PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM HIS MARRIAGE TO HIS DEATH
IN THE YEAR 1649
BY JOHN BURNET
IN TWO VOLUMES
THE SECOND PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM HIS DEATH TO THE RESTORATION
IN THE YEAR 1660
BY JOHN BURNET
IN TWO VOLUMES
THE THIRD PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE RESTORATION TO THE DEATH OF
CHARLES THE SECOND
IN THE YEAR 1685
BY JOHN BURNET
IN TWO VOLUMES
THE FOURTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF CHARLES THE SECOND
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THE FIFTH PART
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IN TWO VOLUMES
THE SIXTH PART
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CHARLES THE FIRST
FROM THE DEATH OF WILLIAM THE THIRD
TO THE DEATH OF GEORGE THE SECOND
IN THE YEAR 1727
BY JOHN BURNET
IN TWO VOLUMES
THE SEVENTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF GEORGE THE SECOND
TO THE DEATH OF GEORGE THE THIRD
IN THE YEAR 1760
BY JOHN BURNET
IN TWO VOLUMES
THE EIGHTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF GEORGE THE THIRD
TO THE DEATH OF GEORGE THE FOURTH
IN THE YEAR 1830
BY JOHN BURNET
IN TWO VOLUMES
THE NINTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF GEORGE THE FOURTH
TO THE DEATH OF VICTORIA
IN THE YEAR 1837
BY JOHN BURNET
IN TWO VOLUMES
THE TENTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF VICTORIA
TO THE PRESENT TIME
BY JOHN BURNET
IN TWO VOLUMES

THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM HIS MARRIAGE TO HIS DEATH
IN THE YEAR 1649
BY JOHN BURNET
IN TWO VOLUMES
THE SECOND PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM HIS DEATH TO THE RESTORATION
IN THE YEAR 1660
BY JOHN BURNET
IN TWO VOLUMES
THE THIRD PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE RESTORATION TO THE DEATH OF
CHARLES THE SECOND
IN THE YEAR 1685
BY JOHN BURNET
IN TWO VOLUMES
THE FOURTH PART
OF THE HISTORY OF THE REIGN OF
CHARLES THE FIRST
FROM THE DEATH OF CHARLES THE SECOND
TO THE DEATH OF JAMES THE SECOND
IN THE YEAR 1702
BY JOHN BURNET
IN TWO VOLUMES
THE FIFTH PART
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CHARLES THE FIRST
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treat it as subsisting and binding upon him, or by his acts and conduct shows that he has renounced it and no longer considers himself bound by it, there is, in legal effect, a prevention of performance by the other party, and it can make no difference whether the contract has been partially performed or the time for performance has not yet arrived; nor is it important whether the renunciation be by declaration of the party that he will be no longer bound, or by acts and conduct which clearly evince that that determination has been reached and is being acted upon. It would seem clear, on principle, that a mere declaration of the party of an intention not to be bound, or acts and conduct in repudiation of the contract, will not, of themselves, amount to a breach, so as to create an effectual renunciation of the contract, for one party cannot, by any act or declaration, destroy the binding force and efficacy of the contract."

And the court further say, page 91: " The man who wrongfully renounces a contract into which he has deliberately entered, cannot justly complain if he is immediately sued for a compensation in damages by the man whom he has injured, and it seems reasonable to allow an option to the injured party either to sue immediately, or to wait till the time when the act was to be done, still holding it as prospectively binding, for the exercise of the option, which may be advantageous to the innocent party and cannot be prejudicial to the wrongdoer.' And it was then held that, after the defendant had signified his determination not to be bound by the contract, the plaintiff was entitled to bring his action immediately, and was not obliged to wait until after the day for the performance to begin had arrived."

There is an intimation in some of the authorities outside of this state that there is a divergence in authority when the rule is applied to the question of the abandonment of a lease, and that the rule in Illinois is that damages can not be

recovered upon the lease as an entirety. We find no such authority as held by the courts of our own State. There is a divergence of authority as to the implied duty of a lessor to put a lessee in possession of leased premises as commented upon in Sloan v. Hart, (N. C.) 21 L. R. A. (N. S.), 241, but we find no such authority in this State.

In Hull v. Kroft, 132 Ill. App. 509, it was held that when a contracting party gives notice of his intention not to comply with the obligations of his lease contract, the other contracting party may accept such notice as to anticipatory breach, and if he accepts it as such and considers the contract at an end, he may sue for damages without waiting for the completion and fulfillment of such contract by its terms.

This case involved a lease of lands where the tenant gave such notice prior to entering into possession.

In Hinde v. Madansky, 161 Ill. App. 220, the court, having before it the question of a lease of real estate, held: "Appellees correctly assert that the measure of damages for the abandonment of a lease by a tenant is the rent agreed to be paid less whatever the landlord could have made out of the premises by the use of due diligence after they came into his possession," citing Resser v. Corwin, *supra*.

In Favar v. Riverview Park, 144 Ill. App. 86, involving a lease of lands, the court held that: "The measure of damages for failure to give possession of leased premises is the difference between the actual rental value and the rent reserved to be paid by the lease. The same rule applies to a farm, a dwelling house, a hotel, or business premises. The rule is varied in case of an established business, in which case the measure of damages would be the difference between the rent and the value of the lessee's business, which would necessarily include an allowance

for profits. (Nexter v. Knox, 63 N. Y. 561; Paposky v. Monkwith, 68 Mo., 322.)"

In Oldfield v. Angeles Brewing & M. Co., *supra*, the court held: "It is well settled that for a breach by the lessor of the covenant for quit enjoyment, the lessee can recover as damages the difference between the value of his lease and the stipulated rent. (Buck v. Morrow, 2 Tex. Civ. App. 361, 21 S. W. 398); and no satisfactory reason can be given why the same rule should not be applied in favor of the lessor against the lessee." And the court further held: "Irrespective of whether the breach be by the lessor or lessee, --and in using the words 'lessor and lessee' we do so for convenience of reference, --it is difficult to see why this should not be the true measure of damages, since the damage to either party to the contract is the same, the loss of use and occupancy, which is the value feature of the contract to both parties; and what better way can there be to determine that loss than to take the difference between the amount fixed in the contract and the rental value of the premises for the given time? There is but one breach and there should be but one recovery for that breach." (Citing among other cases Favar v. Riverview Park, 144 Ill. App. 86.)

In Grommes et al v. St. Paul Trust Co. et al. 147 Ill. 643, a suit brought to recover damages for the abandonment of a lease, not, however, until the lease had expired, the court held: "It can make but little practical difference whether the sum agreed to be paid be called rent or damages. It may be regarded as damages for the purposes of this suit. (Hall v. Gould, 13 N.Y. 127; Underhill v. Collins, 132 id. 269.)

In numerous cases involving contracts as to other matters the court has held that the injured party to a contract,

not himself at fault, has the three options of procedure as provided in Lake Shore & Michigan Southern Ry. Co. v. Richards, supra; Shields v. Carson, 102 Ill. App. 44; McKenna v. McKenna, 118 Ill. App. 246; Stoneking v. Long, 142 Ill. App. 203; Hull v. Crawford, supra; Brown v. Hayes, (Wash.) 159 Pac. 89; Cal. Building Co. v. Drury (Wash.) 175 Pac. 303.

Some confusion has been caused as to the applicability of the rule to the facts in this case, by what the court said in Chicago Washed Coal Co. v. Whitsett, 278 Ill. 626. Appellant had purchased coal from appellee in certain quantities to be shipped monthly, and appellee made default in making shipments according to the terms of the contract, and appellant, by reason of appellee's default, refused to make payments for coal that had been already shipped, and the court held: "If appellant deemed the contract still valid and binding, it then had the right to treat the contract as terminated for all purposes and bring an action for its breach and for the damages which it had sustained by reason of non-performance or being prevented from performing the contract, or it had a right to return the contract as subsisting and to keep it alive for the benefit of both parties, keeping itself at all times ready, able and willing to perform its part of the contract and at the expiration of the term of the contract sue for its damages sustained by reason of the wrongful non-performance by appellees, but it could not do both," citing Lake Shore & Michigan Southern Ry. Co. v. Richards, supra. The court further held: "If it elected to keep the contract alive and in force for the purpose of recovering damages for future profits, it must do so for the benefit of both parties and must both allege and prove performance of the contract upon its part or

a legal excuse for its non-performance before there could be a recovery on the contract (citing cases). In the present instance appellant did neither, although it evidently tried to do both. It treated the contract as subsisting insofar as its right to demand delivery of coal thereunder was concerned, and broken insofar as appellee's right to demand payment of the coal previously delivered was concerned. This was fatal to appellant's right of action on the contract."

It is noticed that the court states only two options in appellant's favor instead of three as recited in L. S. & M. S. Ry. Co. v. Richards, supra. Under the facts in Chicago Washed Coal Co. v. Whitsett, supra, appellant did have two options only for the reason that appellant at the time being indebted to appellee for coal shipped could not rescind the contract and cause it to be cancelled entirely because appellant was indebted to appellee for coal shipped, and therefore two options only remained to appellant. Appellant could not exercise each of the two options stated for the reason that appellant was indebted to appellee under the facts in that particular case and selection of both was ambiguous and contradictory.

Defendant in the case at bar contends on the holding in Chicago Washed Coal Co. v. Whitsett, supra, that plaintiff by her letter, having elected to keep the contract subsisting to re-rent the property upon the best terms available, and to hold defendant company and its guarantors upon the lease for any damages resulting from breach of the lease, could not thereafter elect to bring this suit to recover damages upon the lease in its entirety and for future losses upon the lease. It is to be noticed that the lease gives plaintiff the right to terminate it without giving any notice whatever to the defendant. Under the facts in this

Case it can not be said that there is anything ambiguous or contradictory in the conduct of plaintiff in declaring the default and in entering into possession of the premises and attempting to re-rent the same, and thereafter when it was ascertained that defendant had made a complete abandonment of said lease, bringing this suit to recover the entire damages to the plaintiff and the future losses until the end of the term. In the opinion of this court plaintiff has a right under the law of this State to bring her suit to recover the entire damage that will result to her during the term for the defendant's abandonment of said lease.

The measure of damages as found by the court-- the same being the difference between the rental value as agreed upon less the rental value as found by the testimony in the case and compound interest deducted therefrom at the rate of five per cent -- was the correct rule of damages as applicable to this case. (Hinde v. Madansky, supra; Besser v. Corwin, supra; Favar v. Riverview Park, supra, and the other cases cited.)

Some complaint is made as to the nature of the proofs offered as to the value of the leasehold of said premises for the remainder of the term. Witnesses living in the vicinity of the property in question, having large experience in real estate affairs and knowing the value of leaseholds in the vicinity of the property in question, testified to their opinions as to the value of the leasehold in question. This testimony was competent and sufficient upon which the court was entitled to act. (Butler v. Werling, 15 Ill. 488; C. C. C. & St. L. Ry. Co. v. Wood, 189 Ill. 359.) We find no error in the competency or sufficiency of the testimony in question.

Defendant assigns error upon the amount of the finding and the computation made to arrive at the amount of the judgment. We have carefully gone over the computation in relation thereto and find no inaccuracies in arriving at the result found.

Finding no error in the record that warrants a reversal of the judgment of the Circuit Court of Macon County, that judgment is affirmed.

Affirmed.

5023a

Gen. No. 7924.

OCTOBER TERM, 1925.

Agenda No. 30.

People, Ex Rel.
Maude Giles,

Appellee,

v.

Warren Brookshire,

Appellant.

240 I.A. 683

Appeal from the Circuit

Court of Shelby

County

Shurtleff, J.

Appellant was found guilty of being the father of the child of Maude Giles, relatrix, in the County Court of Shelby County and brings the record to this Court for review.

The complaint was sworn to by relatrix alleging that she was an "unmarried woman, and on August 24, 1924, she was delivered of a male child, which by law is deemed a bastard, and that Warren Brookshire, of Macon County, is the father of the said child."

On the hearing before the county court and a jury, appellant was found to be the father of relatrix's child. The testimony of relatrix was that she and appellant and another man and woman took a ride around a four-mile drive in a two seated auto, at night, in the month of November, 1923; that she and appellant had sexual intercourse on this drive, and that as a result of this intercourse a child was born.

Mildred Giles testified that she saw these parties together on the night that relatrix testified this took place. Relatrix fixes the date positively as on the evening of November 10, 1923, and states that she never had intercourse with appellant at any other time. Relatrix never informed appellant of her condition until after the baby was born, though she admits seeing him and also admits taking a ride with him after she knew she was pregnant.

Relatrix in her testimony admitted intercourse with others in the possible period of conception. Appellant denied the act and the two parties whom relatrix testified were in the car on the evening in question, denied that any such act was committed, and further denied that the party of four were together in a machine or otherwise on the night in question. Appellant also offered as a witness a cousin, who testified he was with him during the entire evening of November 10, 1923, and that they-- the cousin and appellant--drove to Decatur; and also offered a witness, Durkin, who testified that he saw them in Decatur on the evening in question.

Where the evidence is sharply conflicting, as it is in this case, it is imperative that the instructions to the jury be accurate and free from error. (Zanlar v. Gas Co., 204 Ill. App. 291; Crisles v. Chicago R. R. Co., 204 Ill. App. 492; Carlin v. Chicago R. R. Co., 205 Ill. App. 303.) Where the evidence is conflicting an error in giving a bad instruction is ground for reversal, although the law is correctly stated in other instructions. (Herrig v. C. & A. R. R. Co., 299 Ill. 217.)

In appellee's second instruction on the question of an alibi the jury were instructed that "the exact time and place of sexual intercourse alleged by the prosecutrix is not material in the case; and if the jury believe the defendant had sexual intercourse with the prosecuting witness within the period of gestation," etc. In view of the testimony of relatrix in this case, the giving of People's second instruction was error. In Matteson v. The People, 122 Ill. App. 69, it was held: "In this state of the proof the court instructed the jury at the request of the prosecutor that the precise date of the conception of the child was not material. This was very misleading as applied to the proof in this particular case. If defendant was the father of the child, then the

precise date of the conception was immaterial; but in determining whether he was its father, it was very material whether it was conceived on the day when he bought the turkey and did the chores at the stable, for if it was not conceived on that day then he was not its father. This instruction was well calculated to lead the jury to disregard this most material feature of the defense."

The same rule is laid down in The People v. Welch, 143 Ill. App. 194. Appellant's instruction marked "H", which was refused stated the rule of law correctly as applied to the facts in this case and should have been given. People's instruction number five informed the jury: "Although you may believe from the evidence that the prosecutrix, witness, had sexual intercourse with another person about or near the time her bastard child might have been begotten, still such fact would not warrant the jury in finding the defendant not guilty, if you believe from a preponderance of all the evidence in the case that the defendant is the father of such bastard child." The giving of this instruction was error. In The People v. Lamberg, 160 Ill. App. 645, the court held: "It was, we think, reversible error to give this instruction. It cannot be construed, as contended by appellee, as submitting to the jury the question whether the relatrix had intercourse with Lindholm or Nyquist about the time in question, but by it the jury were told that if she did have intercourse with other men at or about the time in question, that notwithstanding such intercourse the jury might find that the defendant was the father of her child, Taking all of her testimony together, the testimony of relatrix that the defendant was the father of her child, was but the statement of an inference from the facts stated by her, that she had intercourse with him and only with him about the time the child was begotten, and there is no evidence tending to prove any other fact as the basis of such inference. If she had intercourse with one other than the defendant about the time the child was begotten,

there was in her testimony no basis for the inference stated by her, or from which the jury might properly draw the inference that the defendant was the father of her child." But it is contended that this was not a mandatory instruction. In Mitchell v. Central Illinois Public Service Co., 231 Ill. App. 409, it is held: "It is true that the language of the direction concerning the verdict is not peremptory, but nevertheless the language is used to give the jury a direction as to the kind of verdict to render, and must therefore be considered as directing a verdict. It is not necessary that the language used to direct a verdict should be peremptory. Illinois Terra Cotta Lumber Co. v. Hanley, 214 Ill. 243; Illinois Cent. R. Co. v. Smith, 208 Ill. 608; Conley v. Wells Bros. Co., 155 Ill. App. 567."

Appellant assigns error upon statements made to the jury by counsel for the appellee in his closing argument, in stating: "That the question of the guilt of the defendant was one easily determined; that when the warrant had been sworn out against the defendant the defendant was going to the High School at Blue Mound; that the High School directors investigated the charge of bastardy being tried in this case at the time the warrant was issued and found the defendant guilty and expelled him from school and refused to permit him to come back, and that the Board had no trouble in finding the defendant was guilty of the charge on trial."

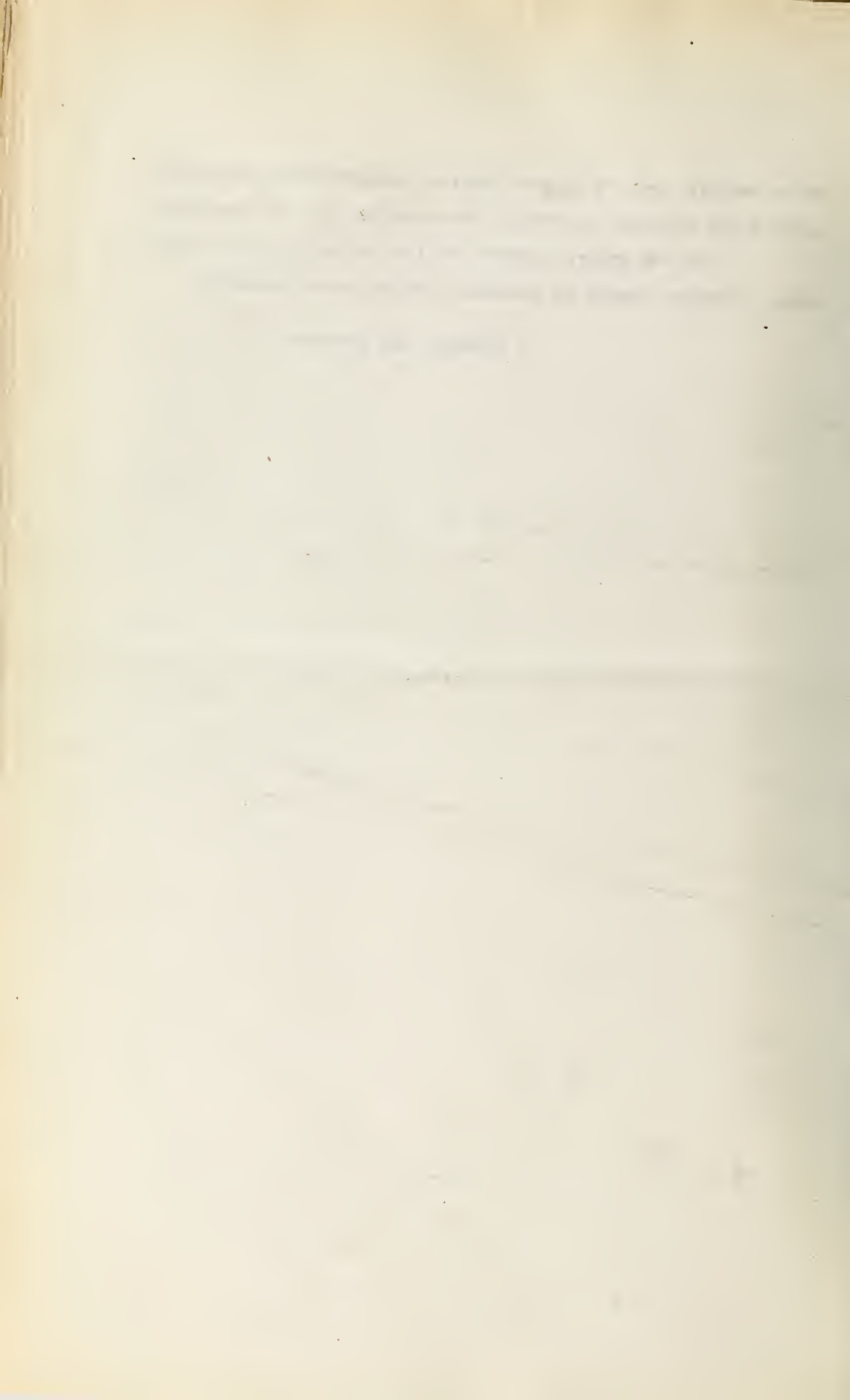
There was no testimony in the case upon which to predicate such an argument. It was entirely outside of the record and highly prejudicial to appellant's cause and constituted reversible error.

Other assignments of error are made as to rulings upon evidence, one of which had reference to People's exhibits one and two and the People calling appellant to the stand in reference to these exhibits, which finally were not admitted. We do not find

these exhibits set out in the abstract and doubtless on another hearing the attitude of counsel for relatrix will be corrected.

For the errors pointed out the judgment of the County Court of Shelby County is reversed and the cause remanded.

Reversed and Remanded.



240 I.A. 683

Mabel Schooley,

Appellee,

v.

J. Keenan's Bank, a
Corporation,

Appellant.

Appeal from

McLean County

Circuit Court.

Shurtleff, J.

On April 9, 1923, appellee, in moving to the vicinity of LeRoy, transferred certain of her property affairs and bank account to appellant bank. She brought to the appellant bank a draft on Chicago for \$4,361.48 and advised the president, Arthur J. Keenan, and the assistant cashier, Joseph Keenan, that she wanted to deposit the \$361.48 on a checking account, \$1,000 on a time certificate, and the balance, \$3,000, she desired to have loaned out upon some safe security. To this the Keenans agreed. There was some discussion as to who would be a prospect for the loan and the name of Mr. Charles Null, who was one of the directors of the bank, was mentioned as a possible borrower, and she was told that Null would not give a mortgage but would only give his personal note if he borrowed the money as he was amply able to borrow money without mortgages for that amount. Appellee thereupon left the draft, received a credit in her checking account for the \$361.48, a time certificate for the \$1,000 and a receipt in the following words:

"LeRoy, Ill. April 29, 1923.

"Received of Mrs. Roy Schooley three thousand dollars (3000 and no/100 dollars) to loan on approved security.

(Signed) J. Keenan's Bank
LeRoy, Illinois.
J. Keenan, A-C."

This receipt was signed by the assistant cashier, Joe Keenan, and delivered to appellee. At the same time he made out

a certificate of deposit in favor of Mrs. Roy Schooley but payable to the order of J. Keenan's Bank to represent the three thousand dollars. This certificate he kept in his note file until the loan should be made. Appellee at the same time rented a box from the bank to keep her securities in. She deposited in this box the one thousand dollar certificate, together with other papers and mortgages which she had with her. She then stated that she was going to Chicago and would be gone for some time and told the assistant cashier when he had made the loan to put the note in her box and for that purpose left the key with him. Mr. Null, the prospective borrower, who had been in Florida, arrived in LeRoy about the 11th of April, 1923, and immediately thereafter he was asked by both Joseph Keenan and his father, Arthur J. Keenan, with reference to the loan and he stated that he did not want the money. Three or four days elapsed and they had been unable to find any other person to use the money, whereupon Arthur J. Keenan, who was the president of the bank, suggested to his son that if he thought it would be all right with Mrs. Schooley he would take the money and give his note for it, as he needed it. The assistant cashier said he thought that would be all right and made out a note, which his father signed, and passed to his father's credit the proceeds of the certificate which he held.

On appellant's part it is claimed that the elder Keenan told his son to immediately notify Mrs. Schooley, who was living at Ellsworth, that he had borrowed the money so that she would know about it, and it is claimed by the son that he did write a letter to appellee and properly stamped and mailed the same to her address at Ellsworth, and that the letter was never returned. This was about the 14th of April, 1923. Appellee lived some eight or nine miles from LeRoy. About five weeks later or the 22nd of May, appellee went to Chicago where she stayed until some time in August. Some time after appellee had gone to Chicago her brother-in law, Harry Schooley, came into the bank with two other notes

which she had to be placed in her box, and he went with Joseph Keenan, the assistant cashier of the bank, to the box, and it is claimed on the part of the bank that Harry Schooley was shown the note of Arthur J. Keenan's which was lying right on top of the papers in the box, and Joseph Keenan insists he placed his pencil on it.

There was testimony tending to show that appellee was at the bank after she returned in August and went to the box where this note was kept. There was nothing further transpired in connection with the matter until in January, 1924, at which time there was a meeting at the school house to organize a new bank to take over the assets of the Keenan Bank, which had been compelled to liquidate. At that time appellee and her brother-in-law, Harry Schooley, talked with Arthur J. Keenan and the witness B. F. Baker, and this note was mentioned, Keenan saying to her that he was sorry the way things had turned out and that they could not loan the money to Charles Null, and said that it would have been better for both of them, but at the time he borrowed the money he thought his note was as good as Null's, to which it is claimed the appellee replied that she thought so too. Prior to this time Arthur J. Keenan had become a bankrupt and his estate was being settled in a bankruptcy court. He was insolvent. Harry Schooley denies seeing the note in appellee's box in the summer of 1924. He states that he saw some note in the box but assumed it was Null's note and nothing was said about the matter and it was not so that he could read it or see any of the writing on the note. Appellee denies that she was in the bank at any time. Appellee testified that she never knew anything about the loan to Keenan until the occasion of the meeting at the school house in the winter of 1924; that the assistant cashier had informed her that the loan had been made to Null, and in some things appellee was corroborated by her brother-in-law, Harry Schooley.

There were some conferences about the estate of Arthur J.

Keenan after the meeting in the winter time, and appellee signed a composition agreement among the creditors of Keenan with the understanding, however, that she could withdraw her name at any time before all of the creditors had signed. Appellant offered proof that she signed two of such agreements, neither of which, however, ever were completed or became effective. There was a sharp conflict in the testimony as to appellee's knowledge that the loan was made to Keenan, but it was not claimed that any borrower's name, except Null's, was mentioned in April, 1923.

Appellee brought suit in assumpsit upon three special counts, one of which was based upon the receipt of the bank and an additional count upon the common counts. Appellant submitted five pleas; the first, non assumpsit, the fourth that the defendant did loan said money so deposited with it, as in said declaration mentioned, upon approved security, as then and there agreed upon; and an issue of fact was made upon the first and fourth pleas. Appellant's third plea raised the issue of ultra vires on the part of the bank to enter into any such contract or to act as agent for appellee in such a transaction, to which plea a demurrer was sustained, and appellant assigns error upon the ruling sustaining the demurrer. There was a trial by jury and a verdict and judgment in favor of appellee for \$3150, and appellant has brought the record to this court, by appeal, for review.

Appellant assigns error on the sustaining of the demurrer to its plea of ultra vires. Appellee objects to the consideration of this assignment as no question was raised as to the sufficiency of the declaration and there was no motion in arrest of judgment. However, there was a motion to direct a verdict and appellant submitted the proper instructions, which were refused. Appellant contends that the bank, having no power to act as agent in making loans for another, and the deposit being for a special purpose, is not liable to appellee, but that the officers who did receive

appellee's funds and performed the transaction for appellee, must be regarded as her agents and must assume the liability. The decisions of the courts do not support appellant's contention. (First Nat. Bank of Monmouth v. Brooks, 22 Ill. App. 238; Squires v. First Nat. Bank, 59 Ill. App. 134; Owens et al v. Stapp, Receiver, 32 Ill. App. 653; Doerstler v. First Nat. Bank, 161 Pac. 387; L'Herbette v. Pittsfield Nat. Bank, 38 N. E. 368, and cases there cited.)

In Owens v. Stapp, supra, the court held: "It is urged here, as a complete answer to all the facts and circumstances (to some of which we have above alluded) that such transactions were not within the powers of the bank, under its charter. This, if conceded to be strictly true in a technical sense, does not bar the relief sought; for the transactions in the case at bar, as shown by the record, were not criminal nor against public policy, and when once executed, in whole or in part, as in this case, the bank cannot repudiate the transaction, hold and enjoy the benefits, and escape the liabilities."

And on page 660 said: "Where a corporation is acting within the scope and purposes of its organization, all parol contracts made by its authorized agents are held as express promises of such corporation, and the benefits arising therefrom or conferred thereby raise implied promises and legal obligations, for the enforcement of which an action lies against such corporation. (Bank of Columbia v. Patterson, 7 Cranch, (U. S.) 299; 5 Wheat., supra, 326; 8 Wheat., supra, 338; Bk. of Metropolis v. Gultshlick, 14 Pet. (U.S.) 19; Gottpeid v. Miller, 104 U. S. 521)."

First Nat. Bank of Monmouth v. Brooks, supra, is a complete analysis of the reasoning upon the subject and compilation of the authorities, with which we are in accord, at least, to the extent of holding that the funds, having been received and accepted by the bank--whether or not the agreement exceeds the technical powers of the bank--appellee is entitled to have the agreement

carried out or a return of the funds; and the cases seem to be in accord upon that question.

Appellant further assigns error that the verdict is against the manifest weight of the testimony on the subject of ratification of the loan made. Appellant states the rule correctly that it is the law that the plaintiff, if she sought to repudiate the transaction, should have tendered back the Keenan note as soon as she had knowledge of the circumstances, citing Hilton v. Meier, 257 Ill. 500. The court instructed the jury that "it became the duty of the plaintiff, upon being put in possession of the note of Keenan and advised that the loan had been made in her behalf, to act promptly if she desired to repudiate the transaction." And again the jury were instructed "that if the plaintiff obtained full knowledge of the facts and thereafter gave her consent and approval to said loan, or dealt with the note evidencing said loan as her own property, then such conduct upon the part of plaintiff would amount to a ratification," etc.

The instructions were as favorable to appellant as it could request and more favorable than the law warrants. Appellee testified, and was corroborated, that she never knew that the loan had been made to Keenan until the meeting at the school house to form a new bank; that prior to that time statements had been made to her by Joseph Keenan from which she inferred, and had the right to infer, that Null had her money and that it was all right; that appellee knew little or nothing about the affairs of Arthur J. Keenan until his matters became involved in bankruptcy, and then she was urged by Keenan's attorney to sign the creditor's agreement. There is further testimony tending to show that in February, 1924, while appellee was discussing the matter with Keenan's attorney, he then first ascertained that appellee had the receipt from the bank and that he stated to appellee that he could not advise her and that she should consult some other attorney.

Apparently, appellee had had no counsel upon the matter up to that time.

The question of ratification is a question of fact for the jury. (Pehl v. Davenport Co., 46 App. 513; Beland v. Dixon Nat. Bank, 111 Ill. 323.) And the question whether the delay for the length of time mentioned was a reasonable one or not, under all the circumstances of the case, was a question of fact for the jury and not a question of law. (Jones v. Consolidated P. & F. Co., 100 Ill. App. 92.)

In order to bind a party as principal by ratification of the act of another, he must have been at the time fully and fairly informed of all the material facts and circumstances. (Caldwell v. Meek, 17 Ill. 220; Matthews v. Hamilton, 23 Ill. 416; Reynolds v. Ferree, 86 Ill. 570; International Bank v. Ferris, 118 Ill. 465.)

Inasmuch as Arthur J. Keenan's affairs were in bankruptcy and he was insolvent at and before the time appellee had any knowledge (from her own testimony) that she held his note, it is not surprising (if the jury gave any credence to appellee's testimony) that they resolved the question of ratification in appellee's favor. There was sufficient testimony to support the verdict on that question.

Appellant assigns error in that appellee was permitted on rebuttal to show the financial condition of Arthur J. Keenan in April, 1923, and that he was indebted in the sum of several hundred thousand dollars and was substantially insolvent. Keenan testified on rebuttal for appellee that in April, 1923, he was owing appellant bank the sum of fifteen thousand dollars and had made a statement of his affairs to the bank when making said loans. The competency of this testimony is based upon the testimony of Joseph Keenan, assistant cashier of appellant bank, offered by appellant to support its fourth plea. Keenan testified that he made the loan of three thousand dollars to his father, Arthur J. Keenan; that his father gave no security other than his personal note; that

the note conformed to what he considered "approved security"—an approved note, "that is what it means. We got as good as any other personal note, which we considered a good note; we asked for no other security."

Appellant made the issue under the fourth plea and submitted at least prima facie proof of its truth. Appellee certainly had the right to rebut this proof and offer proof tending to show that the note of Arthur J. Keenan was not approved security. Approved security is defined to mean: "But a sale made on terms of acceptance of 'approved' security or surety, without more, is properly held to mean good and solvent security, which ought to be approved, which the vendor can show to be good and meriting approval. One of the definitions of 'approve' given by Mr. Webster is 'to make or show to be worthy of approbation or acceptance.'" Andis v. Personett (Ind. Sup.), 9 N. E. 101. The verdict of the jury is fully supported by the testimony upon this issue.

Objection is made that in one of appellee's instructions given by the court, the jury were informed that the bank is chargeable with all the knowledge possessed by the president of said bank, as applied to the facts in this case. Technically, this instruction as to the matter stated was not correct and did not state the law. (Cowan v. Curran, 216 Ill. 617.) The question at issue was, whether the note of Arthur J. Keenan for three thousand dollars in April, 1923, was an approved security. Upon this question the bank, at and prior to April, 1923, did have the statements of its president as to his financial affairs, which statements, for the purposes of this suit, must be presumed to have been made correctly, and having such statements, the bank (appellant) had the knowledge of all the facts testified to by the witnesses in this case. If appellant, in fact, had such knowledge from other sources, the technical error in the instruction in no manner prejudiced appellant's case.

Appellant, without making a motion in arrest of judgment, insists that appellee is not entitled to recover in this case, inasmuch as the declaration does not charge negligence to the bank. The foundation of this case is not negligence on the part of the bank. In the opinion of this court the cause of action in this case is rather tersely stated in L'Herbette v. Pittsfield Nat. Bank, supra, "The bank is bound because its cashier, assuming to act in its behalf, received the plaintiff's money as money deposited in the bank, and the fact of his making invalid agreements, if his agreements were invalid, that the bank should at some time in the future invest the money for the plaintiff, and meanwhile should allow him interest upon it, does not have the effect to exonerate the bank from its liability to refund the money, without interest, to the plaintiff on demand, no investment thereof having been made by it. (White v. Bank, 22 Pick. 181; Atlas Bank v. Nahant Bank, 3 Metc. (Mass.) 581; Pill v. Wareham, 7 Metc. (Mass.) 438; Morville v. Society, 123 Mass. 129; Davis v. Railroad, 131 Mass. 258; Bank v. Townsend, 139 U. S. 67 74 11 Sup. Ct. 496; Spring Co. v. Knowlton, 103 U. S. 341; Bank v. Cove, 57 N. Y. 597; Ziegler v. Bank, 93 Pa. St. 393; Bank v. Brooks, 3 Browne, Bank Cas. 387; Thompson v. Bell, 10 Exch.10)."

There may be some question in this case as to appellee's right to recover interest upon the fund; but the question was not raised upon the trial and no assignment of error is made covering that point and no objection to the instruction is argued, so the question is not before this court for consideration.

Finding no error in the record warranting a reversal of the judgment of the Circuit Court of McLean County, the judgment is affirmed.

Affirmed.

TERM NO. 22.

AGENDA NO. 31.

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT.

MARCH TERM, A. D. 1925.

THERESA VERLIE,
Appellee.

vs.

ANTON JUCHNIEWICZ, et. al.
Appellants.

APPEAL FROM ST. CLAIR COUNTY

CIRCUIT

COURT.

OPINION BY HIGBEE, P. J.

Appellee, Theresa Verlie, filed her bill to the January Term, 1923 of the Circuit Court of St. Clair County for the foreclosure of a real estate mortgage covering the premises now owned and in the occupancy of Anton Juchniewicz, making William Shields, Eugenia Shields, George Kaufer and Anton Juchniewicz parties defendant. On February 15, 1916, as it appeared from the proof, William Shields and Eugenia Shields executed a mortgage which was recorded March 4, 1916, on the premises involved to Henry T. Renshaw, trustee, to secure the payment of a promissory note of that date, in the sum of \$800.00. On August 1, 1919 William Shields and Eugenia Shields conveyed these premises by warranty deed to George B. Kaufer. There were no exceptions in this deed and it does not recite that it was made subject to the above mortgage. On October 9, 1919, George B. Kaufer and his wife, conveyed the premises by warranty deed to Anton Juchniewicz

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*Readley & Jolley, Attys for Appellant
Turner, Holder & Ludington, Appellee
Hon. L. G. Cross - Circuit Judge*

Petition for Writ of Certiorari.

Petition Denied Nov. 6th 1925.

appellant without any conditions or exceptions and without stating that it was subject to the mortgage. The note in question was endorsed in blank by Henry T. Renshaw, trustee. Appellee testified that she purchased the note from Renshaw in March or April 1916, and that the same has continually since that time been in her actual possession. There is no evidence that appellee ever recorded any written assignment of the mortgage or that she in any way ever notified the makers of the note or the subsequent purchasers of the property that she was the owner of the note and mortgage. George B. Kaufer testified that when he purchased the property in August, 1919, for which he paid \$2,000.00, he paid Renshaw the \$800.00 mortgage and did not know that appellee was the holder of the mortgage, and that he was to get "a free and clear title" to the property. Appellant, Anton Juchinewicz, paid \$2,500.00 for the property in cash, and also testified that he was to get a free and clear title. On December 2, 1919, Henry T. Renshaw, trustee executed a release of the mortgage in question and the same was recorded the following day. The case was referred to the Master in Chancery, and later to a special Master who recommended a decree foreclosing the mortgage and the court entered a decree in accordance therewith.

It is contended by appellants that as they had no notice, either constructive or actual, that appellee was the owner of the mortgage at the time Kaufer paid the same to Renshaw, the original payee, such payment is a bar to the foreclosure of the mortgage. As the evidence shows conclusively that appellee never filed any written assignment of the mortgage due her, it follows that none of the appellants had any constructive notice that she was the owner thereof at the time the payment was made to Renshaw. Neither is there any evidence tending to show that appellants or any of them had any actual notice that she was

such owner. It is the well settled law of this state that while the assignment of a promissory note secured by a real estate mortgage carries with it the mortgage, which is but an incident to the principal debt, yet this is true only in equity. If a mortgage is so assigned and the mortgagor without actual or constructive notice pays the original payee who has thus parted with the note, such payments will discharge the lien of the mortgage pro tanto and in a suit to foreclose the mortgage such payments may be set up in bar of a decree for foreclosure. Among the decrees in this state so holding are Towner vs McClelland, 110 Ill. 542; McAuliffe vs Reuter, 166 id. 491; Napieralski vs Simon 198 id. 384; Schultz vs Sroelowitz 191 id 249; Gemkow vs Link 225 id 21; Pittsburg Plate Glass Co. vs Krauss 291 id 84 and Hess vs Lobstein 108 Ill App. 217., based upon the doctrine that a mortgage not being assignable at law and the assignee having to rely on a court of chancery to enforce his rights, that court will not enforce it in his favor, if it ought not to be enforced in the hands of the original mortgagee, and the assignee will not be protected from payments to the mortgagor by the mortgagee in good faith where the mortgagor has received no notice either constructive or actual of the assignment. In this case there can be no doubt that if this action had been brought by Renshaw, the original payee, the payment to him of this mortgage out of the money paid for the premises by Kaufer would bar him from any decree of foreclosure. This being true and the evidence failing to show that appellee ever recorded any assignment of the mortgage or gave appellants any notice of the assignment to her, she is not entitled to a decree of foreclosure in this case. Had Kaufer or Juchniewicz purchased the property subject to this mortgage indebtedness and assumed and agreed to pay the same then appellee would be entitled to a decree notwithstanding she had failed to record

any assignment of the mortgage to her and had failed to give appellants any notice of such assignment (Schulz vs Sorelowitz, supra, Gemkow vs Link, supra.). The principal of law invoked by appellants in this case would not apply if this action were a suit at law upon the note itself but since this is an action in equity for the foreclosure of a mortgage, we must hold in accordance with the rule of law laid down by the above authorities that the payment of the mortgage indebtedness to Renshaw, trustee, the original payee, is a bar to a decree in favor of appellee in this case. This holding is also in accordance with the opinion of this court in the case of Doster vs Oultey, 233 Ill.App.468, in which case a petition for a writ of certiorari has been denied by the Supreme Court.

Under the view we have taken of this case as above expressed, it is not necessary for us to pass upon other errors assigned by appellants.

The decree will be reversed and the cause remanded with directions to the court below to dismiss appellee's bill for want of equity.

DECREE REVERSED AND CAUSE
REMANDED WITH DIRECTIONS.

not to be reported.

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT.

filed Nov. 12th 1925

OCTOBER TERM A. D. 1925.

240 I.A. 683

TERM NO.13.

AGENDA NO.4.

THE PEOPLE OF THE STATE
OF ILLINOIS.
Defendants in Error.

vs

W.C.RETTICH,
Plaintiff in Error.

ERROR TO THE COUNTY COURT
OF
SALINE COUNTY.

240 I.A. 683

Per Curiam:- Plaintiff in Error entered a plea of guilty to the information which charged that on November 14, 1923, he "did then and there unlawfully transport intoxicating liquor on the public highways in violation of the Illinois Prohibition Act, contrary to the statute," etc., and he was sentenced to the Illinois State Farm for six months and fined \$200.00.

He contends that the information does ^{not} charge the commission of a criminal offense and that it is insufficient to support the judgment. The contention must be sustained under People vs Wallace, 316 Ill. 120, People vs Martin, 314 Ill. 110, and People vs Barnes, 314 Ill. 140. While there was no charge of "unlawful transportation" in either of these cases, yet they are clearly applicable because under section 7 of the Prohibition Act the transportation of intoxicating liquor is not unlawful if the party has a permit from the Attorney General. The sufficiency of the information may be raised by motion in arrest of judgment or by Writ of Error.

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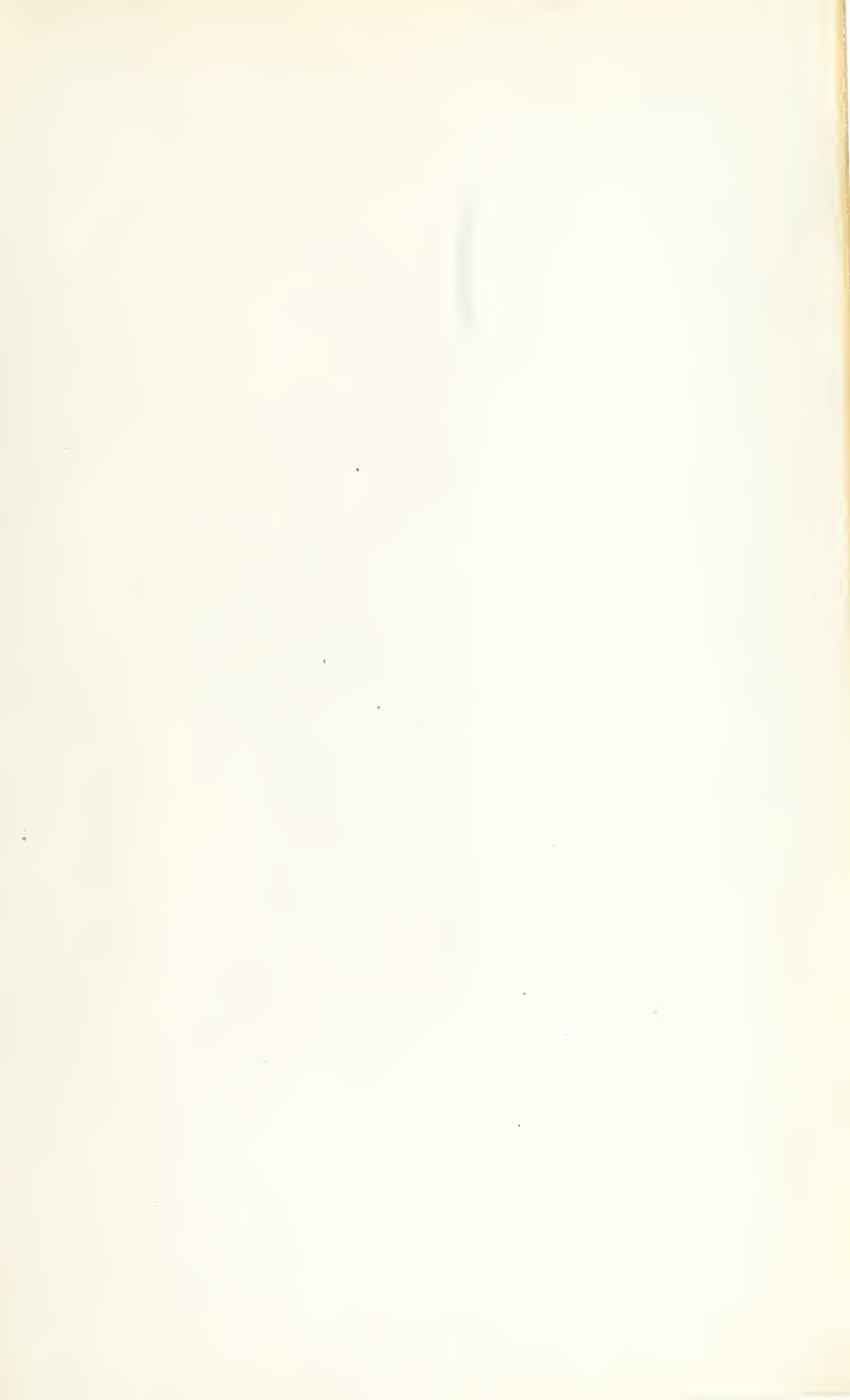
see Brief for attorney

Klanauski vs People, 218 Ill. 418; People vs Wallace, 316 Ill. 120 - 122. Under the authorities above cited it was necessary to aver that plaintiff in error transported intoxicating liquor without having such a permit to do so.

The judgment of the County Court is reversed.

Reversed.

not to be reported.





III. Unpublished opinions

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